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The Solicitors' Journal

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Current Topics.

Law Reform.

To the December number of the *Nineteenth Century* Mr. THEOBALD MATHEW contributes a weighty article advocating the setting up of a new Commission on Judicature which could once again overhaul the whole of our judicial machinery and bring it into closer touch with the requirements of the times. As he points out, we have had many such Commissions in the past, but only some of them have borne fruit of any value. At the moment Lord HANWORTH'S Committee, after making a number of useful suggestions for expediting, and lessening the cost of, litigation is considering in what other directions reform may be introduced. It has been whispered, but with what truth we cannot say, that the Committee is not unlikely to propose some far-reaching alterations in our legal system, one of them being the abolition of the House of Lords as an appellate tribunal. Many and vehement have been the threats levelled in the past at the House as a political institution; fewer at it in its judicial capacity; and it has survived them all. But it is worth recalling that by the Judicature Act, 1873, the abolition of the House as an appeal court for England was actually embodied in the statute. In its passage through Parliament the section by which this was to be effected received much attention and opinion was divided as to its merit, particularly as the anomaly would continue of Scottish and Irish appeals still coming to the House. However, the question soon took on a purely academic character, for the section of the 1873 Act never came into operation, and by the Appellate Jurisdiction Act, 1876, the House as an appeal court acquired a new lease of life. It is no doubt an august tribunal and has delivered many notable judgments, but, as Sir REGINALD POOLE and others have pointed out, its approach is hedged about by conditions which only the very wealthy or the poor person can contemplate without serious misgivings. Its decisions we must, of course, accept as the ultimate expression of judicial wisdom, but possibly if a further appeal were competent its judgments might experience the fate of those of inferior tribunals in being occasionally reversed. There is much to be said for one appeal only. That was indeed what Lord SELBORNE had in view in fathering the Act of 1873, and it may be that this may be recommended by Lord HANWORTH'S Committee, for it will be observed that the terms of reference to that Committee include not only rearrangements of the Supreme Court and of the Divisions comprised in the High Court, but likewise "the elimination or restriction of the rights of appeal to, within, or from that court." In this and on other matters there is ample scope for the energies of the law reformer.

Road Accidents.

STATISTICS can be made to prove anything, which explains why the recently published report of the Ministry of Transport as to the principal causes and circumstances of accidents resulting in death which occurred on the roads of Great Britain in the first six months of the present year received such a warm welcome from so many different quarters. The appalling fact remains that a death rate of over 3,000 persons in six months is directly caused by motor traffic, and an investigation into and measures to deal with the causes of this holocaust are matters of urgent public necessity. An analysis is provided of 2,963 accidents. Deaths were caused by pedestrians running into the roadway in 314 cases, 242 accidents were due to pedestrians losing their nerve in traffic, and 204 accidents to pedestrians taking risks in moving traffic. On the side of the motorist excessive speed was a contributory cause in 265 accidents and inattention on the part of the driver in 139. Out of 4,041 drivers, 214 were inexperienced to varying degree. Attempts have been made by interested bodies to draw conclusions from these figures in favour of or against the motorist or the pedestrian, and indeed it is possible in many cases that the responsibility must be shared. The difficulty of apportioning the blame is well known in the courts and was the main reason why the House of Lords restored Mr. Justice HUMPHREY'S judgment in *Swadling* v. *Cooper* [1931] A.C. 1, with regard to the proper method of summing up to juries where contributory negligence is raised and only a few seconds separate the two acts of negligence. It is significant to note in this connection that most of the persons killed were either very old or very young. Whether the responsibility be "joint" or "several," there is no doubt that much can be done to minimise risks by means of such devices as lighter coloured road surfaces, more adequate pavement accommodation and similar devices. Whether the motorist is too quick or the pedestrian too slow is a problem which cannot be solved *in vacuo*, but only with reference to individual cases.

A Trade Restriction Avoided.

AN ingenious, and as it turned out, perfectly legitimate, way of escaping from the bonds of a restriction against trade competition was revealed the other day in a case of *Lambourne's Ltd.* v. *Cascelloid Ltd.*, decided by FARWELL, J., but so far as we know, only reported in the Birmingham press. Two brothers, whom we will call A and B, had been in partnership for some years in the manufacture and sale of what was described as "men's wear sundries," i.e., collar studs, links and other small articles including jewellery. In 1931 they quarrelled, and the partnership was dissolved upon somewhat unusual terms. The business was to be sold by auction, each partner being at liberty to bid, and whichever partner was bought out was to enter into a covenant restraining him from competing either directly or indirectly with the purchaser over a very wide area, including Great Britain and most of the dominions, for a period of ten years, provided however, that if he at any time re-purchased the business or any part of it, the covenant should cease to have any effect. Both partners agreed to be bound by this, before either of them knew whether he would buy the business or not. A, being the highest bidder, purchased the business and early in 1932 formed a private company to take it over. B was greatly disappointed at having been bought out, and one day met a friend who was the managing director of the defendant company, who were competitors for the plaintiff's trade, and had some time previously offered to purchase a section of

their business. As a result of the conversation the offer was renewed, and eventually with the idea of limiting competition and avoiding a price war the plaintiffs sold all the goodwill of that section to the defendant company, the idea being that they would amalgamate it with their own. The assignment was made out to the defendant company, its successors and assigns, and at the moment it was executed, the defendant company had agreed to re-sell the business so acquired together with a portion of their own to B. On discovering this, the plaintiffs, A and his company, sued B and the defendant company for a declaration that the assignment had been procured by fraudulent misrepresentation and concealment of material facts, and for its rescission. The plaintiffs' case was, that they would never have agreed to sell the business if they had known that it would get into B's hands, for, apart from personal reasons, the result was to release the restrictions upon him. The plaintiffs' case broke down on it being proved to the satisfaction of the court that the defendant company knew nothing of the restriction imposed upon B not to compete with A. FARWELL, J., dismissed the action, saying that it was quite plainly settled that where a person was purchasing property he was under no obligation to disclose the fact that he had agreed to sell it to another person. Here B, knowing well that the plaintiffs would never sell their business to him, managed to acquire a portion of that business through an intermediary who took care not to disclose the real ultimate purchaser. On the point of law the case appeared to be covered by *Dyster* v. *Randall & Sons Ltd.* [1926] Ch. 932, where LAWRENCE, J., granted specific performance of an agreement entered into in very similar circumstances.

Probate Sought in England and Italy.

PROBLEMS arising in connection with the Conflict of Laws are usually as interesting as they are intricate, but the case of *Hollingsworth* v. *Mitchelson* (as yet unreported) decided by Sir BOYD MERRIMAN, P., on 5th December, was of almost unusual interest. The facts of the case are too complicated to be given in any detail, several highly important points of Italian law being involved. The testatrix, who died in Italy, leaving property both there and in England, had made two wills in the year of her death. The first, which was in English form, disposed of all her English property, both real and personal. By her second, made some two months later, and in Italian form, she undoubtedly intended to revoke her earlier will entirely, and she completely altered the disposition of her property. The learned President held that the second will prevailed as regards personalty, but not as regards realty, as it lacked form, being unsigned owing to the physical incapacity of the testatrix resulting from a stroke. By s. 779 of the Italian Civil Code a will may be valid if unsigned, but only if the reason for the absence of signature is declared to the notary who must record it; a formality which was not properly observed. It was also alleged that the requirements of s. 778 of the Code, which deals with the appointment of executors, were not fulfilled. In these circumstances the learned President found himself in the position, not uncommon in such cases, of having to put himself in the place of an Italian judge and decide according to Italian law, whether the requirements of the Civil Code had been properly fulfilled. The unusual point, however, is that, in fact, probate proceedings have been started in Italy, and in due course an Italian judge will have to decide the very point which was before the President, and on the same facts. In the circumstances he expressed himself, not unnaturally, as doubtful whether he ought not to await the determination of the issue in Italy—a determination which, in the peculiar situation, would have been completely binding upon him. However, after some hesitation, he decided to attempt a solution according to the expert evidence on Italian law, and gave judgment accordingly. An interesting question would arise in the event of a final contrary decision in Italy. Questions of foreign law are questions of fact, therefore, once having been found as such, there could be no appeal on that score. This case might almost be regarded as giving an illustration of the desirability of treating questions of foreign law as questions of law, but it must be remembered that this is an almost unique instance of the courts of two countries being seised of the same matter.

Shop Rents and Trade.

THE question of reducing the ground rents of Crown properties in Regent-street has again been raised in Parliament and in the Press. It appears that when the present leases were accepted, the holders did not anticipate the trade depression; they are now paying more than they can get from their shopkeeper tenants, and consider it equitable that a reduction should be made. When the suggestion was first mooted, a cynic enquired whether, if trade had boomed instead of slumping, the leaseholders would have implored the Crown to raise the rents. That is a hypothetical question—but the attitude of the Government, as at present defined, does contemplate the hypothesis, for the Minister of Agriculture, when dealing with the matter, expressed the view that, having regard to fluctuations in trade, the ground rents would, taken over a term of years, be found to be fully secured. There is, however, one aspect of the matter which does not appear to have occurred to either side: if the landlord of business premises in a much frequented thoroughfare reduces rents in the middle of a term, what will be the effect on shopkeepers carrying on businesses in lesser known streets, holding leases which reserve lower rentals in view of the smaller turnover anticipated? If equity is to be considered, account must be taken of the fact that reduction of rent gives tenants an advantage which is ultimately an advantage over competitors, and one for which no one concerned bargained when he made his lease.

Club Subscriptions.

A CASE in which a club member paid up all his arrears of subscriptions, resigned, and was subsequently asked to pay an extra subscription imposed after his resignation, recently came before the Court of Appeal in *Aldenham and Others* v. *Campbell* (*The Times*, 21st November). Rule 9 of a club's rules provided that whenever the accounts on 31st December in any year showed liabilities in excess of cash and invested resources, the committee might at any time before the end of the following June impose an extra subscription on the town members. The respondent wrote to the secretary on 29th September, 1931, resigning from the club. By resolution on 26th May, 1932, the committee decided to impose a liability on town members for an additional subscription of £17 10s. Mr. Justice SWIFT held that the respondent was not liable for the extra £17 10s. as he was not a member for the whole year. It was true that under the rules he could not claim back any part of his subscription, but that fact did not make him a member for the whole year. His lordship pointed out that the extra payment could be added to his 1932 subscription, but not to that of 1931. The Court of Appeal upheld this judgment, the Master of the Rolls pointing out that the respondent's resignation was effective as from 29th September, 1931, from which date, under r. 38, he ceased to be a member of the club. *Finch* v. *Duke* [1896] 1 Ch. 409 (40 SOL. J. 224), decided that in the case of a voluntary association a member's resignation had the effect of terminating his membership as from the date of his resignation, in the absence of a rule limiting the right of resignation. "It is plain," said the Master of the Rolls, "that the respondent would be entitled to say: 'You cannot impose any liability on me because I was not a member of the club throughout the previous year.'" Another important point established by this case is that resignation from a voluntary association dates from the time of the letter of resignation, and not, as Mr. Justice SWIFT thought, from the date of its acceptance by the committee, unless there are rules to the contrary.

Judgments against Married Women

ANOMALIES OF THE PRESENT LAW.

MUCH criticism has recently been directed at the law relating to married women. An excellent example of this was the forceful paper read at the Provincial Meeting of The Law Society at Oxford in September by Mr. Isidore Kerman. Of late years there has been a number of statutes, all tending to give women equality with men. These enactments reflect the modern view of woman's position in society. But the law relating to married women still lags far behind the times in many respects. A striking example of this is the difficulty of enforcing a judgment against a married woman's property. Mr. Kerman has pointed out this difficulty, among many others, dealing principally with the question of committal to prison. It is proposed here to consider it in somewhat greater detail and to point out the law as it stands and the practical difficulties which result in trying to enforce a judgment by other means.

The incapacity at common law of a married woman to contract was altered by equity, which created separate property and enabled her to contract so as to bind the free separate property which she had at the date of the contract, so long as such property was not subject to a restraint on anticipation. The Married Women's Property Act, 1882, s. 1 (4), extended her power, providing that every such contract should bind her after-acquired separate property, but s. 19 preserved the full effect of a restraint on anticipation. The married woman must, however, to be made liable, have separate property at the time of the contract: *Palliser* v. *Gurney*, 19 Q.B.D. 519. It was also decided under the Act of 1882 that an alienation of the money when due, though not actually received by the married woman, was good notwithstanding the restraint on anticipation: *Hood Barrs* v. *Heriot* [1896] A.C. 174. In that case all the relevant facts occurred before the passing of the Married Women's Property Act, 1893. From s. 1 of that Act and the subsequent decisions of *Barnett* v. *Howard* [1900] 2 Q.B. 784, *Brown* v. *Dimbleby* [1904] 1 K.B. 28, and *Studley* v. *Studley* [1913] P. 119, at p. 128, it is plain that the present position is that a married woman's contract binds only separate property which she was possessed of or entitled to at or after the date of the contract, and which was not subject to a restraint on anticipation. The question, therefore, is, in every case, whether the property against which it is sought to enforce the contract comes within this rule. If it does not, then the contract cannot be enforced, and a striking example of the hardship worked on creditors by the rule occurred in *Wood* v. *Lewis* [1914] 3 K.B. 73.

In that case judgment was given on 29th December against a married woman on a bill of exchange. On 24th December the grantor under a deed had paid to the trustee the quarterly sum of £250 due on 25th December to the married woman under the deed, in which it was agreed that the said quarterly sum should be held by the trustee in trust to pay it to the married woman and so that during coverture it should be for her separate use without power of anticipation. The judgment was in the form approved in *Scott* v. *Morley*, 20 Q.B.D. 120, it was unsatisfied, and accordingly on 30th December a garnishee order *nisi* was made attaching all debts due from the trustee to the married woman. It was held by the Court of Appeal, following *Barnett* v. *Howard*, *supra*, that the quarterly sum when received by or on behalf of the woman was separate property which at the date of the contract or after that date she was restrained from anticipating, and was therefore protected. Lawrence, J., clearly recognised the difficulties of a creditor in such a case, but felt himself bound by the authorities: [1914] 3 K.B., at p. 85.

Barnett v. *Howard*, *supra*, was an even stronger case, for there the money sought to be attached under a garnishee order had actually been paid into the married woman's banking account. Moreover the judgment was signed after a decree absolute of divorce had been obtained on the husband's petition, though the contract had been made during coverture.

In *Brown* v. *Dimbleby*, *supra*, the remedy sought was the appointment of a receiver of the income of the defendant by way of equitable execution on the judgment. She was a widow, though again the contract was made during coverture. But the Court of Appeal followed its own decision in *Barnett* v. *Howard*, *supra*, and the creditor was again baffled.

It is to be hoped that steps will soon be taken to remove such an anomaly from the law. On the one hand are enactments giving women equality with men in almost every walk of life—one must suppose that this is because public opinion recognises them as equal. On the other hand, there remain on the Statute Book enactments such as those discussed above, which still reflect the former view that woman is a child in all matters relating to money or business and ought not to incur any obligations, and if she should do so, she ought not to be required to meet them. But this is not all. If a married woman so far emerges from childhood as to carry on a trade or business, then she is placed on a footing of equality with men and can be made bankrupt, and her property subject to a restraint on anticipation can be used for the benefit of creditors: Bankruptcy Act, 1914, ss. 36 (1), 52 and 125. And finally, in order to make the position completely ridiculous, if this married woman trader finds the demands of creditors too insistent, she can relapse into convenient financial childhood by the simple expedient of turning herself into a limited company. There she is immune again, though in this case the immunity is not confined to married women, but applies equally to all persons, and even if she hold ninety-nine out of one hundred shares, she is secure, and can watch complacently the futile efforts of the creditors to get their due.

In this condition the law is nothing less than an invitation to married women to perpetrate gross frauds on creditors. Small wonder that many women avail themselves of the opportunity!

Children Legitimised by Subsequent Marriage.

DIVORCE COURT'S INABILITY TO ORDER CUSTODY.

THE Legitimacy Act, 1926, recognised in England and Wales the principle of *legitimatio per subsequens matrimonium*. Marriage of the parents *ipso facto* legitimates the child, provided that neither parent was married to a third person at the time of the birth. The Act also gave the legitimated child extensive rights in respect of real and personal property, and also rights and obligations co-extensive with those of a legitimate child in respect of his own support and that of others, and in respect of claims for "damages, compensation, allowance, benefit, or otherwise" (s. 6). In fact, with the exception of succession to dignities or titles of honour, the purpose and effect of the Act seem to be to put the legitimated child on exactly the same footing for all ordinary purposes as his more fortunate brother, and to remove the stigma which formerly attached to illegitimacy at birth.

In these circumstances the decision in *Bednall* v. *Bednall* [1927] P. 225 came as a surprise. In an undefended petition the husband asked for the custody of a child born to the parties to the suit before their marriage. To support the order for custody the petitioner also asked for a declaration that the child was legitimated. Hill, J., though satisfied on the evidence that all the conditions required by the 1926 Act were fulfilled, refused to find the facts necessary to enable him to make the order, on the ground that the child, being an interested person, was not a party to the suit. He took the view that the court was not one of competent jurisdiction to make either an affiliation order or a declaration of legitimacy under the Judicature Act, 1925, s. 188 (which replaced the Legitimacy Declaration Act, 1858).

This unfortunate decision has been acted upon in two subsequent reported cases, in spite of strenuous argument to the contrary. In *Green* v. *Green* [1929] P. 101, Lord Merrivale, P., was asked to direct that an order for custody of a legitimated child should stand. The Attorney-General, appearing for the King's Proctor, sought strenuously to argue that *Bednall* v. *Bednall, supra*, was wrongly decided, pointing out that the attention of Hill, J., had not been drawn to the Judicature Act, 1925, s. 193, replacing the Matrimonial Causes Act, 1857, s. 35, which gave the court general powers to deal with custody of the children of parents whose marriage was the subject of the suit. Moreover, he argued, there was nothing on the face of the statutes to confine this power to legitimate children. He cited *Jackson otherwise Macfarlane* v. *Jackson* [1908] P. 308, in which custody was given of a child born of a marriage which was annulled on the ground of insanity. This annulment meant, of course, that there never had been any marriage and that the child was therefore illegitimate. The President, however, did not accept this argument. He took the view that an order for custody involved a declaration of legitimacy, which might be of far-reaching consequences, particularly to the child affected. The child not being a party to the suit, an order for custody could not be made in the suit. The power to grant custody under s. 193 of the Judicature Act only extended to "children," i.e., children legitimate at the time of the suit. They must be ascertained legitimate by the appropriate legal process provided for by the 1926 Act and the Judicature Act. Consequently he refused to order custody, but directed that the child should remain in the care and control of the petitioner, its mother, until further order. This direction there was power to make in the exercise of the general jurisdiction of the High Court in respect of infants, the mother having a *primâ facie* right to the custody of her natural child (*Barnardo* v. *McHugh* [1891] A.C. 388, per Lord Herschell, at p. 399, followed in *R.* v. *Lewis*, 9 T.L.R. 226, per Lord Coleridge, C.J., at p. 227, and *R.* v. *New*, 20 T.L.R. 515). He further pointed out that the case before him was the converse of *Bednall* v. *Bednall, supra*, where the natural father was seeking to deprive the mother of her child.

In *Jones* v. *Jones*, 45 T.L.R. 292, the Attorney-General made another attempt to upset *Bednall* v. *Bednall, supra*, but Hill, J., refused to go back upon his former opinion. It was argued that the 1926 Act treated the person as legitimated by the marriage, and then laid down machinery for taking advantage of the legitimation. But Hill, J., took the view that the order for custody involved a declaration of legitimacy, which the Divorce Court was not competent to make. Some other procedure must be adopted and the child must be a party to the proceedings. The Attorney-General pressed strongly the fact that in the present case there had been re-registration under the 1926 Act, which now made the case stronger than the other two cases, in that it called into existence a certificate of the same *primâ facie* validity as a birth certificate. To refuse to order custody would be to say that this certificate was valueless. Hill, J., however, followed the other two cases, and gave a direction as in *Green* v. *Green, supra*.

There the matter unfortunately rests until the Court of Appeal is asked to consider it. The Divorce Court will not make an order for custody since its view is that there is a lack of the necessary parties, and therefore of jurisdiction. A direction can be obtained, as in *Green* v. *Green* and *Jones* v. *Jones, supra*, but in order to get an order for custody the aid of an inferior court must be invoked. The result is that an Act which seems clearly to intend legitimation for almost all purposes (but for a few exceptions, none of which appear at all connected with the question of custody) by the very fact of the marriage of the parents is to some extent completely stultified because of a decision which, with all respect, seems to be erroneous and to have begotten erroneous, if legitimate, children. The anomaly may be a small one, but it is one more instance of the deplorable state of every branch of the law relating to marriage and its consequences.

Distributable Shares of Missing Beneficiaries.

BY THE WRITER OF "A CONVEYANCER'S DIARY."

IN our issue for 28th October there appeared a contributed article on this subject to which I replied in my "Diary" for 4th November. The learned contributor returned to the charge (if he will allow me to put it that way) last week.

The real point of difference between us is whether personal representatives or trustees are safe in relying upon their own judgment as to what advertisements should be issued for claimants under s. 27 of the T.A., 1925, in a case which seems to them to be a "special case" within the meaning of that section, or whether they should, in order to ensure protection for themselves, apply to the court for directions.

I think that applications to the court should be made in all such cases. The learned writer of the articles referred to thinks that the personal representatives or trustees should decide for themselves.

Now s. 27, as amended by the L.P. Amend. Act, 1926 (an amendment, by the way, which the learned contributor seems to have overlooked in his first article), does not indicate in what newspapers advertisements should be inserted, except that in all cases there must be an advertisement in *The Gazette* and, when there is land, in a newspaper circulating in the district where the land is situated. Then the section goes on, "and such other like notices including notices elsewhere than in England and Wales, as would, in any special case, have been directed by a court of competent jurisdiction in an action for administration . . ."

As I have said before, I do not see how personal representatives or trustees are to decide what the court would direct in any special case. The only way to find that out is to go to the court for directions.

Our learned contributor complains that I made no mention of *Newton* v. *Sherry* (1876), 1 C.P.D. 246. I looked at that case, but it seems to me that, so far as our present purpose is concerned, all that it decided was that the notices given by the administratrix were, in the circumstances of that case, sufficient. If the directions of the court had been taken the sufficiency of the notices could not have been called in question.

Then the learned writer of the articles says (and he lays great stress upon this) that where a person has not been heard of for seven years he is presumed to be dead. So he contends that personal representatives and trustees may ignore possible claims by such persons.

Here again a similar question arises. How are the personal representatives or trustees to satisfy themselves that a missing person has not been "heard of"? Are they to accept the word of relations, who are in many instances interested? If they should not accept a mere statement, verbal or written, should they insist upon having statutory declarations by all the known relatives? And would even the latter course protect them if it should transpire that in fact some relative had "heard of" the missing person? My view is that personal representatives and trustees should not be advised to take the responsibility of deciding that as a matter of fact a person had not been "heard of" for seven years. If death is to be presumed I think that it should be by the court.

That point is not, however, of such importance as our learned contributor appears to think, because even if there is a presumption of the death of an absent person, there is certainly no presumption as to the time of his death, whether before or after the event upon which he became or would have become entitled to a share in the estate being distributed, or whether he died testate or intestate or with or without issue. Mere presumption of death, therefore, does not help at all, for the same question arises whether there is or is not such a presumption, namely, what notices would the court direct in the circumstances obtaining in the particular case?

I may say, in passing, that in *Newton* v. *Sherry* none of the three judges made any reference to the presumption of death, although there the absent claimant had not been heard of for seventeen years.

Now let me take what I conceive to be a simple instance of a "special case."

A girl of seventeen quarrels with her family because she wishes to go on the stage. She leaves home informing them that she is going to Hollywood to engage in film work and will be known by a stage name, and further that she does not intend to communicate with them. After seven years the father dies intestate. Notice is duly advertised in *The Gazette* as provided by s. 27 of the Trustee Act, 1925. Then follows an administration action.

It is, I suggest, inconceivable that the court would order a distribution without further notices and enquiries. I further say that it would not be possible beforehand to forecast just what directions the court would give, and that if there was no administration action it would not be safe for the father's administrator to decide that for himself.

After further careful consideration, I am still of opinion that, where there is an absent or missing beneficiary, personal representatives or trustees cannot properly be advised to take the responsibility of deciding what notices or enquiries the court would order to be given or made. If they do, then, should the errant beneficiary appear after distribution, they run the risk of an action being brought against them on the ground of the insufficiency of such notices or enquiries, and although in many instances the decision would be in their favour, they would be likely to find themselves saddled with costs and quite possibly with all their own costs. I see no reason why personal representatives or trustees should be advised to put themselves in the position of having such a possible claim hanging over them.

I may add that our learned contributor's experience has evidently been different from mine. He says in his first article "One sees in the daily newspapers advertisements of applications by trustees to the court by way of originating Summons that missing persons shall be presumed to be dead." I have never seen such an advertisement or known of such an application being made.

Company Law and Practice.

Variation of Class Rights.

It is some considerable time since I referred in these columns to the provisions of s. 61 of the Companies Act, 1929, which deals with the rights of holders of special classes of shares, and, as recent events in the City have given it a certain prominence, I think the time is perhaps opportune for me to remind my readers of its provisions. I would say at once that I am not going here and now to deal with any particular set of facts, for reasons which will be sufficiently obvious: I merely propose to refer to the provisions of the section and make certain general observations with regard thereto.

Broadly speaking, s. 61 confers upon a specified proportion of the holders of shares of any particular class, whose rights are proposed to be modified in accordance with a modification of rights clause contained in the memorandum or articles, a right to submit that modification to the court asking for its cancellation. As may be surmised, this right of appeal from the decision of the appropriate majority of the class to the court (which is what the provisions of the section amount to) is pretty stringently limited. It will no doubt have been noticed that it is a common thing, in post-Act articles, to make some reference, in the usual article as to modification of rights, to the provisions of s. 61, and it is certainly advisable to have such a reminder, because it will be seen, when these provisions come to be examined, that no resolution varying class rights, unless it is supported by more than 85 per cent. of the holders of the issued shares of that class, can be, without any risk, treated as valid until seven days have elapsed from the day on which the resolution was passed.

Now for the actual terms of the section. It deals with the case of companies whose share capital is divided into shares of different classes, and whose constitution provides for the variation of the rights attached to any class of shares in the company with the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares. I have referred to companies whose constitution provides for the variation of rights; the section itself speaks of provision being made by the memorandum or articles for authorising the variation of class rights, but to make such a provision in the memorandum of association is not at the present time very common, though it is occasionally done.

When you have such a company, and when in pursuance of such a provision the rights attached to any class are varied, the section goes on to provide that the holders of not less than 15 per cent. of the issued shares of that class (being persons who did not consent to a vote in favour of the resolution for the variation) may apply to the court to have the variation cancelled, and, where any such application is made, the variation is not to have effect unless and until it is confirmed by the court. Section 61 (6) provides that "variation" in the section is to include abrogation; it may be remarked in passing that cl. 3 of Table A (the modification of rights article) only allows for the variation of class rights, hence the desirability of either introducing a wider article in place of it or amending it to include variation where Table A is adopted.

Now the right there given to 15 per cent. of the holders of the shares of that class seems at first sight to be a serious interference with the general principle that the court will not intervene in purely domestic affairs (though as to this more later) but, in order to limit the disadvantages which from the practical point of view might accrue from allowing this intervention by dissident shareholders, the Legislature has gone on to say that if such an application to the court is to be made, it must be made within seven days after the date on which the consent was given or the resolution passed. The application may be made on behalf of the requisite 15 per cent. or more by such one or more of their number as they may appoint in writing for the purpose (s. 61 (2)); this, in a case where the shares were widely held in small blocks, would avoid a multiplicity of applicants, though in practice it would seem quite possible that where the shares are widely held in small blocks, the task of getting 15 per cent. of them to take any active steps, even to the extent only of signing a piece of paper, in time to enable an application to be made within seven days after the consent or the resolution. The apathy of the average shareholder has to be experienced to be believed.

Under Ord. 53B, r. 5 (*e*), applications to cancel, disallow or confirm any variation or abrogation of the rights of holders of special classes of shares under s. 61 must be made by petition; the wording of this rule seems rather over-elaborate, for the section, so far as I can discover, does not provide for the making of an application either to disallow or confirm any variation, but only for the cancellation thereof. It is quite true that the court is given power to disallow the variation, and in certain circumstances, must confirm the variation, but the application can apparently only be for cancellation. Maybe one might, in view of the wording of the section, ask by the petition that a variation be cancelled or disallowed, but there certainly seems no possibility of any application to confirm a variation. There is no chance of the onus of establishing a variation being on the majority.

On any such application the court may hear the applicant and any other persons who apply to the court to be heard and appear to the court to be interested in the application; after so doing the court may, if it is satisfied, having regard

to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation—but if the court is not so satisfied, it must confirm the variation (s. 61 (3)). There is no appeal from any decision of the court under this section (s. 61 (4)).

Any order made by the court on any such application must be forwarded to the registrar of companies by the company; if default is made in so doing the company and every officer of the company in default is to be liable to a default fine, i.e., £5 per day for every day during which the default continues (s. 61 (5) and s. 365). That is the sum total of the provisions of the section, and we will consider the effect of them rather more in detail.

First of all, it may be called an eminently practical section. There is no possibility of causing any serious handicap to a company and its affairs by taking some proceeding which may drag on for perhaps years and years. Seven days only is allowed for the making of applications, and there is no appeal from the decision once given, and no possibility of the time for the making of the application being extended.

Thus far the section is admirable, and there is no doubt but that its intentions are excellent. But is it wise, as a matter of policy, to depart from the well-settled principle established by the courts, that a company's domestic affairs are its own, to be decided by itself? To this perhaps you answer that, though that is satisfactory as a general rule, there are cases where it is necessary to interfere in order to prevent some real injustice being done. An admirable answer, but are not the courts not strong enough to prevent such things without any legislation to that effect? To put the matter in a slightly different way, do the provisions of this section really add anything to the general law on the subject?

It was long ago settled that the court would interfere at the instance of a minority to protect them from oppression by the majority, or where something *ultra vires* the company is intended to be done, and for these propositions I think it sufficient to refer to the cases of *Menier* v. *Hooper's Telegraph Works*, 9 Ch. App. 350, and *Burland* v. *Earle* [1902] A.C. 83. If the principle of these decisions were to be applied to class meetings it would appear that s. 61 does not really take the matter any further, though we have so far no guidance as to the view which the court will take as to when a variation would unfairly prejudice the shareholders of any particular class.

There are two cases where voting at class meetings has received some attention from the courts: *Goodfellow* v. *Nelson Line (Liverpool) Limited* [1912] 2 Ch. 324, and *British America Nickel Corporation Limited* v. *O'Brien* [1927] A.C. 369. Quite frankly it is not easy within a short compass to set out any general principle which emerges from them, and I do not propose in the space remaining at my disposal to attempt to do so, but I may say that they do show that, in exercising voting rights at meetings of a class, the voter ought to allow the interests of the class to predominate.

But s. 61, at any rate, does furnish useful machinery, for, assuming that the court has a similar power, whether the approach to it be by means of s. 61 or by action in the ordinary way, the procedure by petition offers a more ready and convenient method of procedure.

CHARTERED INSTITUTE OF SECRETARIES.

Mr. Walter George Hislop, London Secretary of Rand Mines, Limited, has been elected President of the Chartered Institute of Secretaries, in succession to Mr. F. Gurdon Palin. Mr. Hildred Carlisle, Secretary of the Investment Trust Corporation, Limited, and Mr. Howard Foulds, Secretary of Callender's Cable and Construction Company, Limited, have been elected Vice-Presidents. Sir Enoch Hill, President and Managing Director of the Halifax Building Society, has been elected Treasurer.

A Conveyancer's Diary.

Lunatic's Property—Undivided Shares in Land—Effect of Conversion.

A POINT of some interest arose in the recent case of *Re Harding*: *Westminster Bank* v. *Laver* [1933], W.N. 271; 77 SOL. J. 853.

A lunatic who was found to be of unsound mind in 1877 and who remained in that condition until her death in 1932, was absolutely entitled to an undivided three-fourths share in freehold land. She made a will in 1877, but all the beneficiaries under the will predeceased her. Her property was consequently undisposed of. In 1923 the Master in Lunacy adopted a contract for sale of her share in the land and her share was sold, the proceeds being lodged in court and invested.

The question was whether the proceeds of sale were to be treated as real estate and belonged to heirs-at-law of the deceased under the law as it stood before 1926, or whether such proceeds were divisible as personalty amongst the persons entitled to the estate upon an intestacy under the A.E.A., 1925.

Had the deceased not been a lunatic there is no doubt that her undivided share in the land, even if not sold, would have been converted into personal estate and been divisible as such by force of Pt. IV of the 1st Sched. to the L.P.A., 1925, and of course the actual proceeds of sale would have been divisible in the same way.

There are, however, special provisions with regard to persons of unsound mind.

First, there is s. 123 (1) of the Lunacy Act, 1890, which enacts—

> "The lunatic, his heirs, executors, administrators, next-of-kin, devisees, legatees and assigns, shall have the same interest in any moneys arising from any sale, mortgage or other disposition, under the powers of this Act which may not have been applied under such powers as he or they would have had in the property the subject of the sale, mortgage or disposition, if the sale, mortgage, or disposition, had been made, and the surplus moneys shall be of the same nature as the property sold, mortgaged, or disposed of."

The object of the sub-section, of course, is to ensure that no dealing with the lunatic's property under the wide powers conferred by the Act shall for purposes of devolution alter the destination of his or her property.

It will be noted that the sub-section is only concerned with sales, mortgages, etc., effected under the powers conferred by the Act. The sub-section seems, therefore, to have no application to undivided shares, which, remaining unsold, have been converted into personalty by Pt. IV of the 1st Sched. to the L.P.A., 1925. In the case we are considering, however, the undivided shares had been sold before the commencement of the L.P.A., 1925.

Now turn to s. 51 (2) of the A.E.A., 1925, which reads—

> "The foregoing provisions of this Part of this Act do not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic or defective living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land and that law shall, notwithstanding any repeal, apply to the case.
>
> "For the purposes of this sub-section a lunatic or defective who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged."

Part IV of the Act is headed "Distribution of Residuary Estate." The first section (45) abolishes all existing rules and canons of descent and of devolution of real and personal property, tenancy by the curtesy, dower and freebench; s. 46 contains new rules for the distribution of the "residuary estate" of an intestate; s. 47 defines the expression "statutory trusts" as used in the preceding section; s. 48 is concerned with the interest given to a surviving spouse and gives power to personal representatives to raise money for payment thereof where necessary; s. 49 deals with partial intestacies, and s. 50 makes provision for references to the statutes of distribution in an instrument *inter vivos* or a will coming into operation after the commencement of the Act being construed as references to Pt. IV of the Act.

These shortly are the "foregoing provisions of this Part of this Act," mentioned in s. 51 (2) which I have quoted. There is no definition of the "residuary estate" in Pt. IV, for that we must turn to s. 33 in Pt. III, the effect of which is that the real estate of an intestate is to be held upon trust for sale and the personal estate upon trust for calling in and conversion. The proceeds of sale and conversion of the real and personal estate are to be held (after payment of costs) for payment of the general and testamentary expenses and other liabilities, and for setting aside a fund to provide for pecuniary legacies. The residue of the moneys is referred to as "the residuary estate of the intestate."

Applying those statutory provisions to the facts in *Re Harding*, we find this state of things. Before 1926 the undivided shares in land of the lunatic had been sold, but the proceeds of sale were to be treated as real estate by virtue of s. 123 of the Lunacy Act, 1890. Then by s. 33 of the A.E.A., 1925, the money treated as realty became money again, but by reason of s. 51 (2) of the Act the abolition of the existing rules and canons of descent and method of distribution provided for in the "foregoing provisions" of Pt. IV did not apply. I should have thought that s. 51 (2) should have provided not only that the "foregoing provisions" of Pt. IV, but also the provisions of s. 33 (which is in Pt. III) should not apply. However, it seems clear enough that the effect of s. 51 (2) is that so far as regards a lunatic's estate, what was or was treated as real estate at the commencement of the Act should continue to be treated as such, and should devolve under the general law of descent in force before the Act, and that was the view taken by Bennett, J., in deciding *Re Harding*.

Then the point was taken that, although the proceeds of sale must be treated as real estate, they should preserve the character of undivided shares in land and would therefore be reconverted by Pt. IV of the L.P.A., 1925, but that contention did not prevail, although I must say that it seems to me that there was much to be said for it.

In the course of his judgment his lordship said that the operation of s. 123 of the Lunacy Act made it necessary to consider the money as land and not as an undivided interest in land. There was nothing on which the transitional provisions could operate, and consequently there was on 1st January, 1926, a beneficial interest in real estate to which the intestate was entitled, which fell within the exceptions provided for by s. 51 (2) of the A.E.A., 1925. The learned judge also held that so much of the dividend on the invested proceeds of sale as accrued before the death of the intestate belonged to the persons entitled to her personal estate, and so much as accrued afterwards passed as realty.

At present I do not see why the proceeds of sale was not to be treated as undivided shares in land, thereby being treated as "of the same nature as the property sold," as provided by s. 123 (1) of the Lunacy Act, 1890. The result of that, of course, would be that the proceeds must devolve as personalty. Perhaps a full report of the judgment will reveal the learned judge's reasons for holding otherwise.

Landlord and Tenant Notebook.

Status of Market Garden.

In a recent article (77 Sol. J. 846) I suggested that twentieth century legislation, in differentiating between the incidents of tenancies according to user of premises, has been somewhat careless in defining the status created; in some cases actual user, in others intended user appears to be the test, and when intended user is the test, it is not always quite clear whether the intention must be or have been common to both parties. Hamlet's "there is nothing either good or bad but thinking makes it so," may or may not be sound philosophy, but the principle cannot be easily extended to leases. If a court of law has to decide whether tenancies are governed by an Act of Parliament, the fact that one party took the premises but the other party did not let them as a dwelling-house, or shop, or farm, may make the task of the court unduly difficult unless the statute provides for such a contingency. And examination of such enactments as the Housing Act, the Rent, etc., Restrictions Acts, the Agricultural Holdings Act, the Allotments Act, and Pt. I of the Landlord and Tenant Act, 1927, reveals that, as mentioned in the article above referred to, the test is generally either purely objective, the criterion being actual user, in which case landlords may, of course, in some cases be able to invoke the common law and equitable rules as to giving effect to intentions though not expressed in the lease and as to changing the nature of the thing demised (see 76 Sol. J. 572 and 589); or else inadequately subjective, the criterion being the purpose for which the premises are let, which ignores the possibility of absence of consensus and that of absence of purpose.

In one case, however, the problem seems to have been faced. The status of market garden is created by the Agricultural Holdings Act, 1923, and the parties are given the rights and subjected to the obligations of that status by passing two tests. First, the effect of the interpretation section, s. 57, is that every piece of land let, and, in fact, cultivated, wholly or mainly for the purposes of a market garden, allotment gardens under the Allotments Act, 1922, alone excepted, is provisionally qualified. This preliminary test is purely objective. (It can, apparently, lead to difficulties; in *Lowther* v. *Clifford* [1927] 1 K.B. 130, C.A., a finding that some land at Barnes was a "plum orchard" was disapproved in the Court of Appeal, as the produce was sent to Covent Garden, but the decision turned on quite different issues.) But, by s. 48, incidents are created in favour of tenants of holdings "in respect of which it is agreed by an agreement in writing that the holding shall be let or treated as a market garden," and these rights are, indeed, most of the rights conferred on tenants under the whole of the Act which could be of any use to a market gardener. But they do not include the advantages in the matter of security of tenure and compensation for disturbance (s. 25 and s. 12), and, apparently, any tenant who in fact cultivates demised land as a market garden comes under these provisions whether the status has been agreed or not.

The narrower definition of status, made by reference to premises and both parties, is more satisfactory than many other definitions in similar legislation, but is not, apparently, so precise as to make argument impossible. For the word "treated" has now been the subject-matter of two decisions of the Court of Appeal, decisions which may reduce the scope of future discussion to questions of fact.

In *Re Masters and Duveen* [1923] 2 K.B. 729, C.A. (decided under similar provisions in the 1908 Act), the court had to deal with land which since 1908 had in fact been what is in ordinary parlance called a market garden. The tenant in the case before them had taken it on a yearly tenancy in 1919 and been given notice to quit expiring at Michaelmas, 1921. In his agreement he was described as a market gardener, which he in fact was; several clauses were such as one would

expect to find in a tenancy agreement of a market garden—he had cultivated it as a market garden. But one clause contained a provision by which the landlord contracted out of the Act in so many words. This was held to be effective as a bar to a claim for statutory compensation for improvements, the answer to the plea that there was a statutory prohibition of contracting out being that one could not contract out of what one had never been in, so that the argument begged the question. The clause showed that the parties did not intend to be within the Act, and the words "let or treated" implied intention. The land must "be let by one person as landlord and occupied by another as tenant as a market garden by agreement in writing, and so treated as between them for the purpose of governing their rights."

The other authority, *Saunders-Jacobs* v. *Yates* [1933] 2 K.B. 240, C.A., shows that, on the other hand, express words contracting in are not necessary. Here the tenant of property which was in 1904, when the lease was granted, a private residence with grounds and meadow land had claimed compensation in respect of the latter (the residence and grounds had been sub-let during the last years of the term) on the footing that it was a market garden. The defendant was the assignee of the original tenant, who was described in the lease as a florist, and the defendant held in trust for a company carrying on a similar business. The lease did not say that the property or any part of it was a market garden, but it did differentiate between the residence and grounds and the meadow land; there were general covenants against waste and to repair, but a special covenant to keep the house and grounds in good order; there was a covenant against alterations and additions, but this excepted "glasshouses, greenhouses or other erections made or used by nurserymen, market gardeners, florists or farmers"; there was a covenant against trade, but this excepted that of a nurseryman, market gardener, etc. And soon after the grant, the defendant's assignor had ploughed up some of the meadowland and turned it into a market garden, the business being continued by the defendant and the company his *cestuis que trust*.

In the action the lessors claimed damages for waste and asked for a declaration that no part of the premises was a holding or market garden. The court adopted the interpretation given in *Re Masters and Duveen*, but held that it meant while occupation and treatment were not enough and that they must be referable to an agreement, the agreement need not contain the word "treated." These premises were let on a lease which restricted the tenant's activities, but left him to use the premises as a market garden entirely at his will, and treated meant let in such a manner that the premises could be treated within the ambit of the lease as a market garden.

The reasoning is perhaps open to criticism, in so far as it is based on the proposition that "treated" is merely a term of wider connotation than "let." For, looking at the following section, s. 49, which provides for the acquisition of the status or part of the status by direction of the agricultural committee when a landlord refuses to agree to it, one cannot help thinking that "agreed to be let as a market garden" refers to the original grant, while "agreed to be treated as a market garden" is intended to apply to cases where parties to a tenancy which says nothing about user, or even prohibits market gardening, desire to confer the status during the currency of the agreement.

NON-POLITICAL ASPECTS OF THE EMPIRE.

It is announced by the Dominions Office that, on the invitation of the Secretary of State, Mr. Thomas Hollis Walker, K.C., has agreed to act as the chairman of the meetings of representatives of non-political Empire organisations which it is proposed to hold in order that the question of closer co-operation between such organisations may be discussed.

Our County Court Letter.

PRECAUTIONS FOR YACHTSMEN.

A QUESTION of liability for the dragging of anchors was recently considered at Poole County Court in *The "Denisem,"* in which the claim was for damages for negligence. The case for the plaintiff (the owner of the 17-ton auxiliary motor yacht "Coral") was that (1) his vessel entered the harbour (on the 22nd August) in a 4 to 5-knot breeze, and brought up (with two anchors) about 50 yards astern of the "Denisem" (a French auxiliary motor schooner) in Brownsea Roads, (2) while the "Coral's" skipper and crew were below, at lunch, the "Denisem" drove down and crushed a smaller yacht (the "Bint") between the two vessels, (3) the small boat was cleared, but the "Denisem" ran aground, and fouled the telephone cable between Brownsea Island and the mainland. The meteorological records showed a fresh breeze at the time, and the harbour master's evidence was that two anchors were necessary in the Roads. It was contended that the defendant (the owner and master of the "Denisem") should either have started his engine or dropped a second anchor earlier. The defendant's case was that (*a*) he had already been weatherbound in the Roads for two days, and had found one anchor sufficient, with 70 metres of cable, (*b*) the "Coral" anchored too close (not allowing the "Denisem" room to swing with the tide) with the result that the "Coral's" anchor fouled the cable of the "Denisem," which did not drag her anchor. Corroborative evidence was given by the master of another yacht (and also by the man in the "Bint"), and a local pilot (of thirty years' experience) stated that one anchor was ample. His Honour Judge Hyslop Maxwell (having held that the "Denisem" had dragged her anchor, and that this negligence was the cause of the collision) referred the case to the registrar for the assessment of damages. It transpired that the Postmaster-General might claim for the damage to the telephone cable.

THE LIABILITIES OF CLUB COMMITTEES.

THE above subject was recently considered at Ipswich County Court, in *Haggar* v. *Cook and Others; the Borough of Ipswich Working Men's Club and Institute*, third parties. The claim was for £60, being the agreed value of furniture taken over by the Ipswich Unemployed Workers' Association in premises formerly occupied by the St. Edmundsbury and Ipswich Regiment of the Church Lads Brigade, of which the plaintiff was treasurer and trustee. In June, 1932, the first defendant had prepared a memorandum of fixtures, etc., stating *inter alia*: "I am prepared to hire them in my own name as a trustee of the Association." The committee approved the taking over of the lease and furniture, and paid the plaintiff £5 (as a deposit) by a cheque signed by the first defendant and another. The rent fell into arrear in May, 1933, whereupon the third party was registered under the Friendly Societies Act, 1896, and entered into possession of the premises and furniture. His Honour Judge Hildesley, K.C., held that (1) there was no evidence to support a claim for indemnity by the defendants against the third party, in whose favour judgment was therefore given, with costs; (2) the plaintiff, being aware that he was dealing with an indefinite body, had insisted upon the first defendant being responsible; (3) exclusive credit was therefore given to the first defendant, who was liable to the plaintiff in law, even though the third party (being now in possession as the successor of the Association) ought to have assumed liability. Judgment was therefore given for the plaintiff against the first defendant only, with costs, no opinion being given as to whether the first defendant had a right to an indemnity from the other fifteen defendants (or any of them) as members of the committee. The leading cases upon the above subject are *Steele* v. *Gourley* (1887), 3 T.L.R. 772; *Stanfield* v. *Ridout* (1889), 5 T.L.R. 656; *Harper* v. *Granville-Smith* (1891), 7 T.L.R. 284.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Band Concert as Entertainment.

Q. 2879. A band, to help pay for their instruments, proposed to hold Sunday entertainments in a hall. Admission to the hall will be free (to comply with the Sunday Observance Act), but charges will be made for seats in the hall. Does such charge for seats attract entertainments duty? A provincial collector of customs and excise on having the point put to him says that it does, and refers us to his leaflet No. 17, issued from the Custom House, London, E.C.3, on the 9th November, 1931. This leaflet makes it clear that if admission is nominally free, if the person pays indirectly for the right of admission the duty must be paid. In this case there is no indirect payment for admission and no compulsion put upon persons to buy seats, but it is, of course, hoped that they will do so. Is the customs officer correct, or is the case one in which entertainments tax is not payable?

A. The question is whether, on the facts given, the case is distinguishable from *Cordiner* v. *Stockham* [1920] 1 K.B. 104. At first sight the latter shows that duty is payable in the present case, but the Divisional Court was careful to limit its decision to the precise facts. It appears that "there was no convenience whatever for persons to stand within the band hall, and if they did so they would cause obstruction to the gangways. If the public stand in the gangways they are required to leave." This element appears to be absent from the present case, and the opinion is therefore given that—if ample standing accommodation is provided, as for a promenade concert—entertainments duty is not payable.

Beneficial Joint Tenants—Sale—Investment or Division of the Proceeds.

Q. 2880. In 1916 A conveys real property to his wife B, and his daughter C by deed of gift, "To hold the same unto and to the use of the grantees in fee simple as joint tenants." A dies, B and C have entered into a binding contract for sale of the property and the sale is about to be completed. C contends that the purchase money should be invested in the joint names so that the capital ultimately passes to the survivor of B and C. B, on the other hand, wishes for an immediate equal division of the purchase money. Can C enforce her claim to investment? In view of the respective ages of the parties it is clear that C will be the loser by the sale if there is an equal division of the purchase money.

A. C cannot enforce her claim to investment, because B can sever the joint tenancy in equity by notice under L.P.A., 1925, s. 36 (2) (proviso).

Part of a Class C House Converted into a Shop.

Q. 2881. A client owns houses in Class C under the New Rent Restrictions Act. The premises were controlled on the 18th July, 1933. They have since become vacant.

(1) The owner desires to convert the front room of each house into a shop. If he re-lets must he charge the same rent as before, plus only 8 per cent. on the cost of the improvement?

(2) Could he let to a tenant the residential part of the premises at an apportioned rent and let the shop to the same tenant, but by a different contract of tenancy and thus decontrol the shop as business premises?

(3) If the answer to (2) is in the negative, could he lease the shop as business premises to a tenant with the view to the tenant sub-letting the shop to the tenant of the residential portion and thus decontrol the shop?

A. (1) If the front room of each house is converted into a shop, it would not appear that the whole premises would lose their identity and thus come outside the Rent Restrictions Acts. It would appear rather that the shop would be outside the Acts, but that the part of the premises unaffected by the alterations would remain within the Acts, the rent being apportioned (see *Abrahart* v. *Webster* [1925] 1 K.B. 56).

(2) If the residential part of the premises and the shop were let separately, the shop would be outside the Acts. This would be so if the premises had formerly consisted of a shop and dwelling-house, and the shop and house had afterwards been let separately without any alteration to the premises (see *Phillips* v. *Hallahan* [1925] 1 K.B. 756).

Registration of Sub-let Part of a House.

Q. 2882. A, the owner of a dwelling-house and shop of a rateable value of £56, let such premises to B in 1925, at an exclusive rent of £70 per annum. Soon after the commencement of the tenancy B, with the consent of A, sub-let the two rooms above the shop to C at a weekly rent of 10s. inclusive, B thereafter occupying the shop only on the ground floor. The dwelling-house above has been separately rated at £8 net. A had actual possession of the whole of the premises before the commencement of B's tenancy in 1925, by reason of which the premises were de-controlled immediately before the 18th July, 1933.

(1) Having regard to the lawful sub-letting to C, should the separate dwelling-house constituted thereby be registered under s. 2 (2) of the Act of 1933?

(2) If the answer to (1) above is in the affirmative, can the head lessor A effect registration, or must this be done by the tenant B?

It is presumed that the de-control proviso of s. 2 (1) of the Act of 1933 only applies to a house which immediately before the passing of the Act was controlled but the rateable value of which exceeded £13.

A. (1) The separate dwelling-house constituted by the sub-letting to C should be registered under s. 2 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

(2) It would appear that the registration should be effected by the head lessor, A, who appears to come within the definition of "landlord" in s. 12 (1) (*g*) in the Rent and Mortgage Interest Restrictions Act, 1920.

The correct view appears to be that s. 2 (1) of the Act of 1933 relates only to dwelling-houses which remain subject to the Acts, and deals with the position which would arise when the landlord obtains possession. Apart from s. 2 (1) of the Act of 1933, any such house would, of course, be de-controlled under the provisions of s. 2 (1) of the Act of 1933. The provisions of s. 2 (1) of the Act of 1933 prevent de-control where the rateable value of the house on the appointed day did not exceed the limits mentioned therein. The proviso deals with the case where there is a landlord, a tenant and a sub-tenant, and the rateable value of the premises comprised in the sub-tenancy does not exceed the limits mentioned. In that case, if the sub-letting was effected by a tenant, whether statutory or contractual, the provisions of s. 2 of the Act of 1923 will continue to apply. The result will be that when the landlord of the whole house obtains possession of the part sub-let, it will be de-controlled. The part sub-let will not, however, be de-controlled if the tenant obtains possession, because this is prevented by s. 2 (1) of the Act of 1923.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Mr. Justice Wightman died of apoplexy at York during the Assizes on the 10th December, 1863. The following account of his last hours is from the pen of a brother judge: "On the last day of his life, he was in court early and tried a complicated case which lasted the whole day. It was one which excited much interest in the country and the hall was crowded. He felt oppressed, but this did not appear to the audience, who listened with admiration to a masterly summing-up of the long evidence—with admiration not unmixed with wonder to see such vigour of intellect and clearness of recollection supported by such activity of the bodily faculties at such an advanced age. But it was the bright burning of the taper before its sinking into darkness. He returned to his lodgings where happily for himself Miss Wightman was waiting for him. The father and child passed the evening together . . . and he retired to his room. There was just enough in his tone and manner to excite a little uneasiness, and it is said that Miss Wightman made an excuse some time after to tap at his door and enquire how he was. He answered cheerfully, but he never rose from his bed; the old man's strength it would seem had been too severely tried and he sank on the following day." So died Mr. Justice Wightman in his eightieth year.

OUR VIGILANT RULERS.

The fining of the Duke of Atholl in respect of his alleged sweepstake is not the first instance of the apparently instinctive hostility which our government departments evince towards any *levée en masse* in aid of charitable institutions. The late Lord Knutsford (of the Inner Temple and the South Eastern Circuit, Barrister-at-Law) also came in contact with it in connection with a "Million Half-Crowns Fund," which he once organised in aid of the London Hospital. He printed a million cardboard half-crowns with the inscription: "Thank you for a real one." But the eagle eye of the Director of Public Prosecutions was not closed, and soon Lord Knutsford received a threatening letter asking him to explain his "illegal possession of dies for coin-making." When offered the curt alternative of withdrawing his cardboard coinage or going to the Old Bailey, he cheerfully replied that his trial and possible incarceration would be the most effective of all advertisements for his appeal. Eventually, the public official conscience was satisfied by a compromise. Each of the cardboard discs must have a hole cut through it and the currency was saved.

ALL IN IRISH.

At the half-yearly meeting of the Irish Law Society, the President observed (*inter alia*) that every apprentice coming within the Legal Practitioners Act, 1929, must pass an examination in the Irish language, showing proficiency enough to take instructions, examine witnesses and follow proceedings in that tongue. It would be no disadvantage to them if all the judges knew so much. A little knowledge of the tongue would certainly have saved Mr. Justice Fletcher, a former Irish judge, from an awkward moment at the Galway Assizes. A hard-featured man with a red pimply nose and shaggy eyebrows, he was presiding in the Crown Court. An Irish-speaking witness was called to give evidence, and looking curiously at the judge, exclaimed: "Dar mo chianseois, is an fear is granach dha chonnaisch me ariamh." (I hope Irish scholars will forgive an Englishman any faults of transcription). On hearing a suppressed titter, the judge demanded what the witness had said, but the interpreter replied that he could not repeat it and several times declined to do so till the judge sent for two constables and threatened to commit him for contempt. "Oh," said the interpreter, "if it goes to that, I'll tell without scruple He says . . ." "Speak slowly," said the judge, "as I must have it on my notes." "He says that 'upon my conscience you are the ugliest man that I ever saw.'"

Reviews.

Handbook on the Formation, Management and Winding-up of Joint Stock Companies. By Sir FRANCIS GORE-BROWNE, M.A., K.C., Master of the Bench of the Inner Temple. Thirty-eighth Edition. 1933. By His Honour Judge HAYDON, M.A., K.C., and HERBERT W. JORDAN. Royal 8vo. pp. c. and (with Index) 916. London: Jordan & Sons, Limited. 20s. net.

This book occupies, and has long occupied, a unique place among text-books on the law relating to companies: a fact which is sufficiently evidenced by the realisation that this is the thirty-eighth edition to be called for in some sixty-seven years, or an average of a new edition every two years. It is not without some interest to observe that in 1895 it was translated into French.

There are certainly larger works on the subject, but this book has long enjoyed a well-deserved reputation for presenting a complete and accurate *résumé* of company law. There lies on the writer's table as he writes the twenty-seventh edition (1907) of what was then known as Gore-Browne's "Handy Book": the passage of time has certainly given it a middle-aged spread, and thereby caused the loss of some of its handiness, but its utility has increased with the years. Considering the modest sum required for the book, the value it gives is extraordinary.

A point which is not new to this edition, but which seems to invite consideration, is the effect of the case of *Bisgood* v. *Henderson's Transvaal Estates Limited* [1908] 1 Ch. 743, referred to at p. 740. This case, as it seems to the writer, does not go further than this, that a company cannot, under a power of sale contained in its memorandum, enter into a contract for the sale of its undertaking for shares, which provides for the winding up of the company and for the distribution of the shares which represent the consideration without making provision for dissentients as provided for by s. 234. If the contract for sale does not require the winding up of the vendor company, it is submitted that *Bisgood's Case* has no application, and that the company might wind up as soon as the consideration shares had been allotted to it and, if its articles allowed, distribute its assets in specie.

The case of *Re Gregory Love & Co. Limited* [1916] 1 Ch. 203, is referred to in the table of cases as *Francis* v. *Gregory Love and Co. Limited*; in a sense this is correct, but it is not the usual way of giving a reference to a debenture-holders' action, and is rather misleading. The index to this edition seems to have been carefully revised; it has expanded somewhat, and is well adapted for its purpose.

The whole book has been carefully brought up to date, though on p. 657, in referring to *Stead Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840, it should have been made clear that the receiver and manager there mentioned is one appointed by the court: different considerations apply to receivers appointed out of court.

Undoubtedly this book represents a valuable addition to the library of a practising lawyer at a price which is astoundingly moderate.

Books Received.

Compensation for Public Acquisition of Land. By WILLIAM MARSHALL FREEMAN, of the Honourable Society of the Middle Temple, Barrister-at-Law, Recorder of Stamford. 1933. Demy 8vo. pp. xii and (with Index) 120. London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Limited. 10s. net.

Criminal Law and Procedure in a Nutshell. By MARSTON GARSIA, B.A., of Merton College, Oxford, the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. Fifth Edition. 1933. Demy 8vo. pp. xvi and (with Index) 152. London: Sweet & Maxwell, Ltd. 4s. net.

Notes of Cases.

High Court—Chancery Division.

Wingrove *v.* Morgan.

Bennett, J. 14th and 29th November, 1933.

Ecclesiastical Law—Representative Body of Church in Wales—Welsh Commissioners—Powers—Dispute as to Property—Welsh Church Act (4 & 5 Geo. 5, c. 91), ss. 8, 9, and 11.

The Representative Body of the Church in Wales sought to obtain payment of 19/20 parts of a fund in court to itself and the transfer to the Official Trustee of Charitable Funds of the remaining 1/20 part which was held on charitable trusts of a non-ecclesiastical nature. It claimed that the fund was vested in it by the Welsh Commissioners by virtue of the Welsh Church Act, 1914. Acting under s. 11 they had decided that the property in question was vested in the representative body and the question was whether they had power to do so.

Bennett, J., in giving judgment, said that he had to decide whether on all questions as to what vested in the Welsh Commissioners they were the sole judges. The argument was that this was the effect of the language of s. 11. Parliament might have made a party to a dispute judge in his own cause, but very plain language would have to be used before it could be concluded that such was its intention. Such an interpretation should not be put on it unless no other could be. His lordship considered that the Commissioners were given exclusive jurisdiction in such matters as they were empowered to deal with by ss. 8 and 9. Only when property was vested in them for the purposes of the Act had they exclusive jurisdiction over it. Section 11 had not excluded from the jurisdiction of the court disputes between the Commissioners and the King's subjects. The petition must be dismissed.

Counsel: *R. W. Turnbull; Stafford Crossman*, for the Attorney-General.

Solicitors: *Deacon & Co.*, agents for *Barker, Morris and Owen*, of Carmarthen; *Treasury Solicitor.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

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Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

Vesting Orders as to Chattels.

Sir,—Can anyone tell me why it is that s. 51 of the Trustee Act, 1925, gives no power for the court to make a vesting order as to chattels in possession subject to the trust? Where a new trustee is appointed by deed, s. 40 implies a vesting declaration as to "any estate or interest . . . in any chattel," subject to the trust. Usually the interest in the chattel subject to the trust will be a "thing in action" (e.g., where title deeds or jewels are deposited with a bank), in which case a vesting order could be made under s. 51. But cases can be conceived where it would be necessary, or at least convenient, for the new trustees to be able to prove their legal ownership of the chattels. For instance, where a former trustee having retained possession of the chattels after the appointment of new trustees by the court permits the chattels to be in the "possession, order, or disposition" of a beneficiary who subsequently becomes bankrupt. In such a case it would certainly be convenient for the new trustees to be able to prove merely by production of the vesting order that the former trustee was not the "true owner" of the chattels. Is there any way in which new trustees appointed by the court who are unable to obtain immediate possession of the chattels subject to the trust can obtain a legal title before or without an action?

30th November. L. H. E.

Obituary.

Mr. E. J. ELLIS-FERMOR.

Mr. Ernest Joseph Ellis-Fermor, solicitor, of Ripley, Derbyshire, died recently at the age of seventy-three. Admitted a solicitor in 1888, he was a member of the Ripley Urban District Council until last April, and from 1907 to 1912 he was Chairman of the Council.

Mr. D. W. JAMES.

Mr. David Watkin James, solicitor, of Tonypandy, died suddenly on Thursday, 30th November, at the age of fifty-seven. Mr. James, who was educated at Epsom and Cambridge, was admitted a solicitor in 1901.

Mr. W. LAW.

Mr. Walter Law, solicitor, senior partner in the firm of Messrs. H. & W. Law, of Waterfoot, Lancs, died at his home at Lytham St. Annes on Friday, 24th November, at the age of sixty-four. Mr. Law was admitted a solicitor in 1897.

Mr. A. M. LONGHURST.

Mr. Alfred Melville Longhurst, solicitor, senior partner in the firm of Messrs. A. M. Longhurst & Butler, of Fenchurch-street, E.C., died at his home at Sunbury-on-Thames on Thursday, 23rd November, in his fifty-sixth year. Mr. Longhurst, who was admitted a solicitor in 1900, had practised in the City of London for over thirty years.

Mr. F. POCHIN.

Mr. Frederick Pochin, solicitor, a member of the firm of Messrs. Toller, Pochin & Wright, solicitors, of Leicester, died on Saturday, 2nd December, at the age of seventy-five. Mr. Pochin was admitted a solicitor in 1895.

Parliamentary News.

Progress of Bills.

House of Lords.

Greenock Corporation Order Confirmation Bill.
Read Third Time. [30th November.
Kirkcaldy Corporation Order Confirmation Bill.
Read Third Time. [30th November.
Matrimonial Causes (Procedure in Suits for Nullity) Bill.
Reported without Amendment. [5th December.
Road Traffic (Emergency Treatment) Bill.
Read Second Time. [5th December.

House of Commons.

Cinematographs Films (Animals) Bill.
Read First Time. [6th December.
Edinburgh Corporation Order Confirmation Bill.
Read First Time. [5th December.
Ministry of Health Provisional Order (Belper) Bill.
Read Second Time. [6th December.
Ministry of Health Provisional Order (North Buckinghamshire Joint Hospital District) Bill.
Read Second Time. [6th December.
Protection of Dogs Bill.
Read First Time. [6th December.
Unemployment Bill.
Read Second Time. [5th December.

Questions to Ministers.

HIGH COURT JUDGES (SALARIES).

Mr. VYVYAN ADAMS asked the Prime Minister whether it is the intention of His Majesty's Government to introduce a declaratory Bill to confirm the principle that, when the salaries of the judges were subjected to reductions under the Economy Act, 1931, there was no infringement of their judicial independence; and, if so, when such legislation is contemplated.

THE PRIME MINISTER (Mr. Ramsay MacDonald): There are great difficulties in preparing a Bill to affirm a principle that His Majesty's Government regard as unassailed and unassailable. The Government has under consideration whether such a declaratory Act is necessary or desirable. [6th December.

The Law Society.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 6th and 7th November, 1933:—

Richard Ainscough, B.A. Cantab., James Walter Akeroyd, LL.B. Leeds, Edward Norman Allan, LL.B. Durham, Arthur Frederick Allen, Eric Minter Allen, LL.B. Leeds, Henry Yarborough Anderson, Harold Bell Arkle, Robert Arkwright, Christopher Lee Ashford, B.A. Cantab., Francis Lovel Atkinson, Arthur Denis Aylett, B.A. Cantab., Harald Francis Baker, Frederick Norman Ball, Arthur Owen Barfield, B.A. Oxon, John Arnold Payse Bartlett, John Allington Warburton Bate, B.A. Oxon, Arthur Bennison, John Hardy Bentley, Alan Edward Berrisford, Edward Roger Bickley, Philip Binnes, Joseph Anstie Blackham, William Fraser Bland, Stewart Paynter Boase, B.A., LL.B. Cantab., David Robert Boult, LL.B. London, Richard Shakspeare Bramley, Bernard Lionel Bremridge, M.A., B.C.L. Oxon, Denis Bromilow, LL.B. Birmingham, Geoffrey Robert Martin Brown, Ronald Bathurst Brown, Sidney Leonard Brunt, Donald Abraham Bueno de Mesquita, Leslie Mitchell Burton, John Frederick Slade Carpenter, B.A. Oxon, Traviss Carter, Lionel Percy Carver, Eric Humphry Caswell, B.A., LL.B. Cantab., Robert Arthur Waycott Chaff, John Cray Christie, Kenneth Alfred William Clarke, Henry Angus Clidero, Catherine Elizabeth Clough, B.A. Oxon, Leslie Lyon Cobley, James Cockshott, LL.B. Leeds, Mark Sidney Cohen, Francis George Cooke, Alexander James Bryce Cooper, LL.B. Liverpool, Richard Maclaurin Costain, Richard Digby Sell Cotman, Clifford Cowling, Laurance Henry Crossley, Samuel Dalton, LL.B. London, Howel William Davies, John Mansel Davies, Alexander Hugh Hamon Massy Dickie, B.A. Oxon, Abraham Lazarus Dollond, LL.B. London, Harold Driver, Arthur Philip Drury, M.A. Oxon, Kenneth Mallet Duggan, Brian Hutton Dulanty, Philip Thomas Durant, Margaret Sibthorpe Eales, Martin Llewellyn Edwards, B.A. Oxon, Eric William Eldridge, Harold Owen Elias Arthur Robert Malcolm Ellis, Sidney John Ellis, Richard William Hilary Elsden, Francis Martin Emmet, William Pope Farnfield, B.A. Cantab., John Haigh Fielden, Sydney George Fitness, Bernard Thomas Ford, George Vincent Freeman, Mary Alexandra Freeman, LL.B. Manchester, Herbert George Frost, Henry Arthur Fry, LL.B. Liverpool, John Noel Fryer, Roy Broadbent Fuller, Kenrick Jasper Gardiner, Enid Garratt, LL.B. Manchester, Geoffrey Edward Evans George, Reginald Thomas Gilchrist, Charles Francis Bagot Gilman, B.A. Oxon, Harry Glass, LL.B. Sheffield, Richard Allen Golding, Francis Henry Gerard Heron Goodhart, M.A. Oxon, Felix Beresford Goodman, David Goodrick-Clarke, LL.B. Birmingham, Edward David Gosschalk, Frank Edward Gore Graham, Ernest Swinfen Green, John Baur Greenwood, Arthur Henry Gregory, Walter Cameron Haden, M.A. Cantab., James George Harding, Roy Meadows Harmston, Alan John Harrington, Charles Harris, LL.B. London, Edward Michael Harrison, B.A. Cantab., John Whittle Harrison, Reginald Shuffell Hawkins, Robert Chester Haworth, George Macpherson Heard, Eric Heaversedge, William Albert Hedges, Cuthbert Eric Herbert, Cuthbert George Heron, LL.B. Manchester, John Michael Clifford Higgs, LL.B. Birmingham, Arthur Maurice Hill, B.A. Oxon, Oscar Tracy Hill, Thomas Donald Hilton, Harold Robinson Hodgson, LL.B. Manchester, Derrick Arnold Holliger, Robert Crispin Holt, Oliver Harold Hopgood, B.A. Cantab., John Thorneloe Horniblow, Harry Hurwitz, LL.B. Leeds, Harold Sagar Jackson, Bertram David Jacobs, Lancelot Rudsdale Jefferson, Cecil Jobson, Thomas Alwyn John, LL.B. Wales, Richard Hugh Studley Jones, B.A., B.C.L. Oxon, Thornton Lambert Kay, Gerald le Blount Kidd, Richard Martin Alford Kingswell, James Foulds Knape, LL.B. Liverpool, Philip William Farrington Labrum, Raymond Kent Lamplough, LL.B. London, Roland Hennah Langham, B.A. Cantab., Charles Leighton Lauchlan, B.A. Oxon, Robert Kenneth Law, B.A., LL.B. Dublin, George James Lay, Cyril Leathes, Sidney George Cuthbert Leigh, M.A., LL.B. Cantab., David Hilton Lewis, Ormonde Arthur Logie, B.A. Cantab., Howard William Lyne, B.A. Oxon, George Oliver Lynn, Richard Lynn, Hugh Kelly Mackinder, Nathaniel Mackover, B.Sc. London, Archie Henry Chancellor Male, George Ernest Malley, LL.B. Liverpool, John Hayes Marriott, B.A. Cantab., Charles Archer Marsh, B.A. Cantab., Anthony Adeane Martineau, M.A. Cantab., Graham Reed Martyn, B.A. Oxon, Kenneth Willis Mason, William Hugh Masters, Joseph Mayorcas, John Nielsen Mead, Matthew George Megaw, B.A. Cantab., Frank Megson, Claude Geoffrey Metson, John Edward Rooke Millard, LL.B. Liverpool, Dorothy Jennings Miller, Jehu Mills, Alan Ernest Millward, Wilfrid Lyonel Miron, Edward Dobson Moody, Francis Heywood Morley, B.A. Cantab., Cyril Howard Moseley, Norman Cyril Moses, B.A. Oxon, James Leslie Muckle, John Campbell Mulcahy, Denis Neill, Robert More Hilary Noble, B.A. Oxon, John Smith Nuttall, Denis Ernest O'Bryen, B.A. Cantab., William Orrell, Francis Gilbert Outred, Anthony Parsons, Leslie Frederick Angier Parsons, Arthur Norman Patterson, LL.B. Manchester, George Edward Payne, George Patrick O'Neill Pearson, Michael Fellows Pearson, B.A. Oxon, FitzRoy Paget Upsall Phillips, Edmund Pickles, LL.B. Leeds, John Biddulph Pinchard, B.A. Oxon, Harold Browning Portnell, Caroline Winifred Prellé, LL.B. Liverpool, Richard Lindsay Wilson Prentice, James Walter Rackham, Annie Florence Raeburn, Leonard Charles Randall, Leslie Ranson, LL.B. London, Charles Edward Fulcher Reffell, B.A., LL.B. Cantab., Kenneth Weber Relton, Victor Arthur Rendell, Oliver Charles Richards, Abraham Eric Richardson, Anthony Ricketts, Arthur Edward Riley, Gwilym Henry Spooner Roberts, B.Sc. Wales, John Griffith Roberts, Daniel Scott Rowe, James Norman Rushton, John Henry Saxton, Harold Herbert Percy Schuster, Patrick Frank Sharpin, Cecil Sheridan, George William Shersby, John Edward Siddall, LL.M. Sheffield, Robert Gordon Lennox Simpson, John Morton Slack, Guy Frederick Smallwood, Albert Ronald Smith, Ralph James Dalziel Smith, Robert Stanley Hope Smith, Ariel Lionel Solomon, Thomas Muir Sowerby, Henry Nevill Spencer, John Meaburn Staniland, LL.B. Sheffield, Richard Valentine Stapleton, John Dinsdale Stokeld, George Stone, LL.B. London, Joseph Shepherd Stoney, Horace Sutcliffe Stringer, Conyers Alfred Surtees, B.A. Oxon, Bernard Susman, B.A. Cantab., Hubert Wethered Thorn, Reginald George Thurnhill, George Southcote Townsend, James Henry Shepherd Turner, LL.M. Sheffield, Ralph Meredyth Turton, Alfred Dudley Vickers, Guy Melmoth Walters, John Walton, Edmund Gerald Waters, Lawrence Purcell Weaver, B.A. Cantab., Richard Nesham Weir, M.A. Oxon, Richard Allen Wilding, Robert Hugh Willatt, B.A. Oxon, Stanley Williams, LL.B. Liverpool, Thomas Elved Williams, LL.B. Wales, Vivian Whistance Williams, Joseph Myles Wilson, Kenneth Alexander Wilson, John Clermont Witt, B.A. Oxon, Eric Wolfe, LL.B. Leeds, Henry Wolstenholme, Frank Leslie Wood, Harold Geoffrey Woolfe, Frank Arthur Wootton, Douglas William Yates, Jack Yates, James Yates, John Lermitte Yeldham, B.A. Oxon.

Number of candidates, 389. Passed, 251.

The Council have awarded the following prize: To Alexander Hugh Hamon Massy Dickie, B.A. Oxon, who served his articles of clerkship with Mr. Scott Arnott, B.A., of the firm of Messrs. Freshfields, Leese & Munns, of London, the John Mackrell Prize, value about £13.

Final Examination held on the 12th and 13th June, 1933 (addition to the list published in July last), Hugh Treharne Morgan.

INTERMEDIATE EXAMINATION.

The following Candidates (whose names are in alphabetical order) were successful in the Intermediate Examination held on the 8th and 9th November, 1933. A Candidate is not obliged to take both parts of the Examination at the same time.

First Class.

Henry Louis Mackinnon Barnett, John Wright Cheesbrough, Richard Neville Dalton Hamilton, Graham Hamilton-Sharp, Maurice Louis Spector.

Passed.

Sydney Edwin Archibald Anthony, Robert Bellord, B.A. Oxon, John Rutherford Blaikie, Geoffrey Norman Booth, Robert Arthur Brindley, Alastair Howard Dick Brownlee, Alec Raymond Butt, Geoffrey Thornton Calvert, B.A. Oxon, Philip Charles Carter, B.A. Oxon, Dennis Fenton Cave, Bernard William Clarke, Stephen Lampard Clarke, Robert Randle Cole, B.A. Oxon, Charles Joseph Maxwell Daulton, Gerald Stanley Davis, Leonard Gordon Dawson, George Innes Noott Dickson, James Humphrey Ferris Dixon, Ian Ruxton Drummond, John Robert Farrant, B.A. Oxon, Patrick Thomas Fitzgerald, Henry Ernest Lloyd Garle, John Walter Michael Graham, John William Ingram Guest, Jack Harvey, Rowland Lambert Hay, Herbert Leslie Hill, Charles James Hilling, Albert Edward Howe, John Warwick Rivaz Hunt, B.A. Cantab., Capel Jacklyn, George Cecil Jones, Harry Wise Jones, Henry James Killick, B.A. Oxon, Harry Kirk, B.A. Oxon, John Neville Knox, Solomon Kuhnreich, John Richard Leyland, John Rushton Liddle, Thomas Ellis Lowth, Edward Raymond Meeke, Richard Edward Millard, Denis Neville Moore, Felix James Nunes Nabarro, Harold Cecil Norris, Roger Dean Orchard, Claude Gilbert Peter, Basil Hume Pinsent, B.A. Cantab., Edward Platt, Frederick Hamilton Pratt, Leslie Shaylor Revell, Percy Thomas Caswall Rolt, Derek Rowland Scorer, Arthur Ronald Aitken Seacome, Lazarus Shloimovitz, Sydney William Gordon Sims, Guy Manning Stewart-Wallace, John George Sumner, Lawrence James Taylor, William James Cook Taylor, William Wadsworth Teggin, Robert Francis Newman Thoyts, Walter John Cambridge Todd, B.A. Cantab., John Eustace Kenwyn Walters, Bernard Wellington, James Geoffrey Whitehead, Geoffrey Wilkinson, Alan Thomas Wilson, Christopher Thomas Witherby.

The following Candidates have passed the legal portion only:—

Phyllis Ashton, Wilfrid Venus Atkinson, Sidney Francis Bell, Marcus Norwood Ben-Levi, Wilfrid Thomas Beswick, Gerald Massy Bishop, Leonard Jack Blow, Ian Norman Brettell, Sidney George Bristowe, Geoffrey Powell Careless, Thomas Wilfrid Carter, John William Casserley, Norman Catchpole, B.A. Oxon, Russell Emanuel Churcher, Michael Skillicorn Close, B.A. Oxon, Basil Thomas Collings, Sydney Alexander Colvin, B.A. Cantab., Henry James Cornish, Donald Arthur Cowdry, James William Denning, Lewis Dix, Denis George Dodds, Kenneth Roy Dolleymore, James Eaton-Evans, Leo Frank Eggleden, Cyril Norman Elman, David Ivor Evans, Thomas Barham Foster, B.A. Cantab., Martin Grey, Maurice Guthrie, John Arthur Lewthwaite Halsall, Frederick Woollcombe Harris, B.A. Cantab., David Herman, Geoffrey Walter Hewett, B.A. Oxon, Robert Reeves Higgins, John Hilton, Derrick Stuart Holmes, Max Frederick Horwill, Douglas Hilton Jones, Martin Penrhyn Jones, David James Cathcart King, Mordecai Landy, Frederick John Lansdell, John Lanyon, Robert Norman Law, Andrew William Letts, Douglas Lines, Rollo Barratt Mangnall, Basil Robert Meaden Maslen, Kenneth George Metcalfe, Fraser Gordon Millward, Francis Warburton Milne, B.A. Oxon, George Alexander Moore, Robert Morgan, Kenneth Ernest Northcote Mould, Harry Eric Myers, Guy Darnley Naylor, B.A. Cantab., John Ronald Lewis Nicholson, B.A. Cantab., Alfred Ogle, Carrol Austin John Naish O'Sullivan, Richard Gerald Peter, Samuel James Plumbly, Arthur Cecil Potter, Hugh Price, Ernest Leslie Proud, B.A. Cantab., Clement James Rawlings, Richard Reed, George Reeves, John Rice, Richard Michael Ritchie, B.A. Cantab., Raymond Edward Laws Shingles, William Victor Smith, Alfred Roy Southcott, James Stables, Geoffrey Herbert Cyril Staveley, Frank John Stimpson, George Stringer, Kenneth Robert Swan, Frederick Robert Errington Thairlwall, William Edward Thomas, John Heaton Toulmin, B.A. Cantab., John Tye, Michael Hartshorn Waite, William Alexander Way, B.Sc. London, Alan Thurstan Williams, Richard Glover Willows, Frederick Woollam.

No. of Candidates, 392. Passed, 161

The following candidates have passed the Trust Accounts and Book-keeping portion only:—

William Stuart Addiscott, William Frederick Alborn, Thomas Mitchell Arnison, B.A. Cantab., John Bruce Ballard, Henry Sykes Balls, George Coles Barber, LL.B. Leeds, William Paul Barrell, Norman Harry Beach, Peter Hewitt Beeston Beames, Eric Morgan Beddoe, Francis Cecil Leonard Bell, Gerald Leigh Belshaw, Louis Bennett, James Ivor Berry, B.A., LL.B. Cantab., Wilfred Lidderdale Biddle, Terence Aldridge Wilson Boardman, Hedley Thomas Boorne, Alfred John Booth, M.A. Cantab., Bertram Frank Boyles, Edwin Forryan Broughton, B.A. Cantab., Frederick Osborne Bullough, LL.B. Manchester, Archibald Walter Bury, B.A. Oxon, Harold Caine, Andrew Henry Knight Campbell, Phyllis Helena Capern, John Carew-Jones, B.A. Cantab., Norman Vincent Carpenter, Edward Adam Carse, Archibald Louis Hugh Carter, B.A. Oxon, Maurice Fitzgerald Carter, John William Drury Cartwright-Taylor, B.A. Oxon, John Heaton Fitzwilliam Comyn, LL.B. London, Mary Eileen Conday, Arthur Holmes Connell, B.A. Cantab., Herbert Henry Cook, Richard Russell Corfield, B.A., LL.B. Cantab., Richard Leslie Crowther, Eric William Cule, Eileen Mary Adcock Cushman, Cyril Davenport, B.A. Oxon, Ivor Mervyn Davies, William Philip Davies, LL.B. Wales, Robert Joseph Deckers, Harold Leslie Dibben, Bertram Edward Dreyfus, B.A. Cantab., William Arthur Harvey Druitt, B.A. Oxon, James Thomas Eccles, John William Edwards, B.A., LL.B. Cantab., Sydney Montrose Ekin, B.A. Cantab., Alfred John Leslie Ekins, Claude Wattsford Willmott Elwell, B.A. Cantab., Harcourt Bellew Montague Falck, John Gabe Farr, Edgar Warwick Fedden, B.A. Cantab., Keva Fishman, LL.B. London, Douglas Barré Forbes, B.A. Cantab., Emanuel Garber, John Marcus Garforth-Bles, Charles Hugh Geering, Alan George Gilbert, Edward Brumfield Gillhespy, Eric Eugene Leo Giuseppi, B.A. Oxon, John Geoffrey Errington Greenwood, Kenneth Graham Sinclair Gunn, Douglas Eric Hacking, B.A. Cantab., Thomas Macdonald Hagenbach, B.A. Cantab., Gordon Hamer Hall, LL.B. Leeds, James Ashworth Hall, B.A. Cantab., Phineas John Hands, Christopher Hedley Harmer, B.A., LL.B. Cantab., Benjamin James Hartwell, LL.B. London, Leonard Paul Trevor Hill, B.A. Oxon, Eric Austin Hind, Donald Kenneth Hogg, John Holgate, LL.B. Leeds, Harry Bernard Hollick, John Phillips Holloake Hollick, B.A. Oxon, Arthur Kenneth Horner, Neville Stanley Howarth, LL.B. Manchester, Henry Campbell Howson, B.A. Oxon, Ralph Hacking Hulme, Robert Arbuthnott Hunter, B.A. Oxon, Kenneth Oliver George Huntley, LL.B. Liverpool, Edward John Inch, John Noel Laughton Isaac, B.A. Oxon, Roger William Jackling, Frederick Arthur Caunter Jackson, George Gordon Jeudwine, Edward Guy Johnson, Vivian Royson Jones, Roger Thomas Halliwell Kevill Charles Henry Kinnersley, B.A. Cantab., Walter Lawrence Kitchen, Jack Lamb, John Evelyn Hogg Lancaster, B.A. Cantab., Charles Herbert Lea, LL.B. Birmingham, John Clifford Leach, James Beresford Lever, B.A. Oxon, Merlin Winston Lewis, B.A., B.C.L. Oxon, Thomas Alfred Lewis, Arthur Stanley Llewellyn, M.A. Cantab., William Edwin Everard Lockley, B.A. Cantab., Geoffrey Heygate Lowick, B.A. Cantab., Arthur Weatherston Lyall, B.A. Oxon, Edward Herbert Lyde, Andrew Bernard Lyons, B.A. Cantab., John Mair McCrea, Hector Donald Elston MacVitie, B.A. Cantab., Bernard William Main, LL.B. London, Peter Anthony Martin Malcolm, B.A. Oxon, Gabriel Maria Malzer, George Henry Mann, Edward Brewster Mason, LL.B. Manchester, Richard Geoffrey Mayo, Derek Hamilton Mays-Smith, B.A. Cantab., Robert Edgar Megarry, B.A., LL.B. Cantab., Richard Valentine Mirams, LL.B. Birmingham, Douglas Lester Mogford, LL.B. Birmingham, Edward Moore, B.A., LL.B. Cantab., George King Morgan, Cecil Denis Morley, B.A. Cantab., Frank William Moss, B.A. Oxon, Howard Spencer Murphy, B.A. Oxon, Robert Murray, Derek Noel Muskett, Franz Bernhard Noltingk, B.A. London, Kenneth Bilson Nunn, James Maurice Joseph O'Connor, John Henry Mills Owens, Philip Geoffrey Padmore, James Bertrand Guy Payen-Payne, B.A. Oxon, Ralph Warren Peacock, B.A. Cantab., Harold Walter Pegden, James Denis Philipp, LL.B. Manchester, Fred Pickles, Harold Pipes, Roderick Hamilton Purves, John Milburn Pybus, B.A., LL.B. Cantab., Judah Solomon Idezelman Rabin, LL.B. London, John Fairbourne Read, Joseph Alan Reston, LL.B. Liverpool, John Plowman Ricks, B.A. Oxon, Charles Philip Robinson, Nathan Rothman, Gordon Pearse Russell, B.A. Cantab., Francis Douglas Russell-Roberts, B.A. Oxon, Lionel Charles Rysdale, B.A. Cantab., William Salthouse, Gerald Dudley Anthony Seagrim, B.A.,

LL.B. Cantab., Alex Edward Sellers, B.A. Oxon, Richard William Shepherd, B.A. Oxon, Montague Phillip Simpson, B.A. Cantab., Alan Churchill Langford Skerry, Wilfred Alexander Slack, B.A. Cantab., Donald Eric Smith, B.A. Cantab., Jason Adam Smith, B.A. Oxon, William Sommerville, B.A. Cantab., Edward Trevor Stephens, B.A. Cantab., Ronald Webster Storr, B.A. Cantab., Alastair George Corsar Sturrock, B.A. Oxon, James Leo Sutcliffe, B.A. Cantab., Alfred Swales, John Basil Tanner, B.A. Oxon, John Barrington Taylor, Gerald Cuthbert Louis Thompson, B.A. Cantab., Henry John Thompson, LL.B. Sheffield, William Sumner Thompson, Basil Ludlow Thorne, B.A., LL.B. Cantab., Richard Anthony Conolly Tunnard, John Deacon Turner, William Tweddle, Frank Leslie Vassie, John Michael Venables, B.A. Oxon, Henry Philip Verey, B.A. Cantab., Cecil George Vivian, Frederick Chisnell Wallis, Ernest John Weatherley, B.A., LL.B. Cantab., Leslie Hyam Weinberg, Hugh Stephen Wharton, B.A. Oxon, Lester Percival Whatley, B.A. Oxon, Malcolm Hele Wheeler, B.A. Oxon, Conrad Max White, Samuel Lloyd Whiteley, LL.B. Birmingham, Herbert Wilkinson, John Stewart Williams, B.A. Oxon, Arthur John Williamson, B.A., B.C.L. Oxon, Edward Randolph Wiltshire, John Geoffrey Woodward, John Russell Woolford, Charles Gordon Wright, James Egerton Lowndes Wright, Charles Alan Oscar Lindsay Ziegler, B.A. Cantab.

No. of Candidates, 459. Passed, 266.

Societies.

Incorporated Law Society of Liverpool.

ANNUAL GENERAL MEETING.

The 106th annual general meeting of the Incorporated Law Society of Liverpool was held in the Law Library on Monday, the 27th November, at 1.30 p.m.

The meeting was well attended and included the President (Mr. Chas. W. Wright) in the chair, Sir Charles Morton, Messrs. J. C. Bromfield, A. E. Chevalier, R. D. Cripps, L. S. Holmes, W. A. Weightman, F. Weld, W. Glasgow (Vice-President), G. E. Castle (Hon. Secretary) and J. W. Cocks (Hon. Treasurer).

The notice convening the meeting having been taken as read, the President delivered his address.

A perusal of the report, he said, showed that they had not been idle during the year and the accounts showed that the Society was in a sound condition. There were now 424 members.

During his year of office he had been very much struck by the expressions of opinion from representatives of other provincial societies acknowledging their society to be the foremost provincial society in the Kingdom.

Important new rules had been passed during the year by the Supreme Court Rule Committee, and their committee were to be congratulated upon being instrumental in obtaining a very valuable amendment to Ord. XXII, rr. 5 and 6.

Under the new rules a plaintiff would not be able to take out money paid in with an admission of liability, except in full satisfaction of the cause of action in respect of which it was paid in.

Amongst other useful amendments that had been made in the rules during the year was one providing that the amount paid into court before liability was established was to be withheld from the judge. Except upon a defence of tender before action and where a plea under the Libel Acts had been filed, the fact that payment into court had been made, and the amount of such payment, was not to be disclosed to the judge in pleadings or otherwise until liability had been established and damages assessed.

The President then referred to the cost of litigation. He thought that very careful consideration should be given to the two-thirds rule, whereby a junior received two-thirds of the fees marked on his leader's brief.

The remuneration which a solicitor received in the conduct of an action did not have much, if any, relation to these high costs.

A litigant to-day was ready to apply to the court of first instance for a decision upon his case, but the dread of being dragged from court to court, until possibly his case reached the House of Lords, caused him to fight shy of litigation.

The provision of a single Court of Appeal and how it should be constituted was a matter which he hoped Lord Hanworth's Committee would take into serious consideration.

Another point that might be usefully considered in connection with the cost of litigation was the provision of continuous sittings of the High Court in Lancashire. Under the present system litigants had at times to wait for long periods before their cases were tried, owing to the congestion at the Assize Courts held in Liverpool and Manchester.

A man of moderate means could not afford to embark upon litigation and they must do their best to co-operate in any scheme which would tend to lessen high costs.

Somewhat germane to this question was that of extended jurisdiction to District Registries, with particular reference to matrimonial suits. At present only poor persons' divorce cases, whether defended or not, could be conducted through the District Registries, all other divorce cases must be carried on through the Principal Registry. This system appeared to be quite illogical, and was a great hardship to litigants of moderate means.

Mr. Wright then referred to the Solicitors Act, 1933, which was sponsored by The Law Society, who were always most diligent to see that the conduct of their members was beyond reproach. Many of them thought that the Act was unnecessary, and further that it was impossible to make a man honest by Act of Parliament. At the same time they were very willing to assist in every way possible to prevent dishonesty.

Rules under this Act had already been submitted to the Associated Provincial Law Societies, from whom, as was obvious, a certain number of criticisms in respect of details had been received, but the principle on which these rules were based was safely assured. This Act would materially strengthen the hands of The Law Society by increasing their disciplinary powers over the members of the profession.

Dealing with the practice of what was known as "hospital touting" or "ambulance chasing," he said that a scheme had been prepared with the co-operation of the voluntary hospitals in the City whereby in the event of an accident case being admitted to hospital the hospital authorities were asked to warn the patient against entrusting their claims to persons touting for this work. The patient was also informed that if he had his own solicitor, such solicitor would be communicated with at once, but if not, a rota of solicitors who were ready to conduct cases of this nature was shown to him, and if he was unable to select a suitable firm himself, the hospital authorities were asked to supply him with the name of a firm on the rota in strict alphabetical order.

This scheme was working well, and he hoped it would go a long way towards wiping out those organisations which were a menace to the profession and the public.

The President then spoke about the Rent and Mortgage (Restrictions) Acts, and said he certainly thought the profession should continue to press for the removal of mortgages from the operation of the Acts.

With reference to the cases submitted to the Poor Persons Committee, he said that in Liverpool alone last year 134 applications were received and the number of certificates granted by the committee was seventy-one, all of which cases had been tried or were now pending. He considered this a great tribute to the profession.

Another matter to which he referred was the very excellent response that was made to his appeal in June last on behalf of the Solicitors' Benevolent Fund. The appeal was launched in response to a letter received from Mr. E. R. Cook, as chairman of the association, on the occasion of its seventy-fifth anniversary. His appeal resulted in donations being received to the amount of £7 7s. and six life members at £10 10s., and sixty-five annual subscribers at £1 1s. were enrolled, making a grand total of £122 17s.

The President then expressed his real regret in vacating the chair, and said that in the year 1851 his grandfather, Peter Wright, who was then Clerk of the Peace in Liverpool, was appointed President of the Society, and in 1869 his uncle, A. T. Wright, was Hon. Secretary.

It was moved by the President, seconded by the Vice-President, and resolved: "That the report of the committee, subject to any verbal alterations or modifications which the officers may find necessary, together with the statement of accounts, be approved and adopted."

It was moved by Sir Charles Morton, seconded by Mr. J. C. Bromfield and resolved: "That the thanks of the meeting be given to the President for his address, and that the same be printed and circulated as part of the report."

It was moved by Mr. W. Jackson, seconded by Mr. J. W. T. Holland, and resolved: "That the thanks of the Society be given to the officers and members of the committee for their services during the past year."

Solicitors' Managing Clerks' Association.

RECENT DECISIONS ON THE LAW OF LIBEL.

At a meeting of this Association, held at the Inner Temple Hall, on the 1st December, Mr. Justice Hawke took the chair, and Mr. Norman Birkett, K.C., delivered a lecture on "The Law of Libel—Some Recent Cases." His object, he said, was

to explain the significance of the decisions in some recent cases in which he had taken part. He said that the distinction between libel and slander had been established for over 200 years. In the third volume of "Blackstone's Commentaries," published about 1767, the learned authors remarked that what had been said of the spoken word would also hold in every particular with regard to libels by writing or printing, and the actions consequent thereupon, but that in libel by signs or pictures it seemed necessary always to show by proper innuendoes and averments of the defendant's meaning the import and application of the scandal, and that some special damage had followed. The learned editor had made an editorial note in 1829 to the effect that when that passage had been written the important distinction between libels and words spoken did not seem to have been so fully established as it had been some time afterwards; that whatever rendered a man ridiculous or lowered him in the esteem and opinion of the world amounted to a libel, though the same expression, if spoken, would not have been defamation. The distinction had been unknown to the Roman law, and was unknown to-day to the Scottish, German and French systems which followed the Roman. As recently as 1843 a Select Committee of the House of Lords, before which all the judges had given evidence, had desired to abolish the distinction. In some quarters it was still said that the reason for the distinction was the greater malignity in a libel or the fact that it was premeditated or permanent, but the real distinction was an historical one and was set out in Lord Haldane's judgment in the case of *Jones* v. *Jones* [1916] 2 A.C. 489. Libel had been made punishable by the Star Chamber as a criminal offence soon after the introduction of printing; slander had never come under the jurisdiction of that court, but had been regarded in the King's Court as giving rise to a claim for compensation. Jurisdiction over libel had passed from the Star Chamber to the King's Court. The new jurisdiction appeared to have been directed in claims based on slander to the ascertainment of the actual damage suffered. The rule had been to some extent relaxed by judicial decisions which had treated particular types of slander as so injurious by their very nature that actual damage might be presumed, but the old distinction still remained.

Mr. Birkett outlined the law of criminal and civil libels, and then pointed out that it was a criminal offence to write and publish defamatory words of any deceased person if done with intent to injure or bring contempt on his family and so provoke them to a breach of the peace. An action had been fought some little time ago by the late Lord Gladstone against a gentleman who had vilified his father; it had been brought nominally upon a letter speaking of the plaintiff's conduct, but it had been impossible to bring a civil action for the words spoken about the deceased statesman, for, libel and slander being personal wrongs, the right of action died with the person defamed.

Defamatory Meaning and the Jury.

One of the most of fascinating subjects was, said Mr. Birkett, the history of how the meaning of words said to be defamatory had come to be a matter for the jury. Before Fox's Act, 1792, judicial decisions had laid down that it was for the judge to say whether the words constituted a libel or not, but this Act had transferred that duty to the jury, reserving to the judge the right to direct the jury in like manner as in other cases. In the case of *Lockhart* v. *Harrison*, 44 T.L.R. 794, H.L., the plaintiff, for whom Mr. Birkett had appeared, had been a benefactor of the town of Hexham. A local newspaper had commented upon his generosity, suggesting that he had been prompted by a mercenary motive. The defence pleaded that the words were not defamatory and incapable of bearing a defamatory meaning, and that they constituted fair comment. Mr. Birkett had proved that all the statements of fact in the letter were false, and the defence "fair comment" had been abandoned. Having pointed out to the jury that the words were so obviously defamatory that he would not insult them by addressing them on this defence, Mr. Birkett had had to keep his word and had therefore had no address to make. The trial was held at the Northumberland Assizes in Newcastle; his opponent, a native of that part of the world, so impressed the local jury by saying how proud he was to address them in his own native city and to find a jury of his own people that they returned a verdict that the words were not defamatory. The learned judge had been astounded, and when the case had gone to appeal the Master of the Rolls, and later the Lord Chancellor, had both said that the words were so obviously defamatory that they could not imagine anyone finding to the contrary. Nevertheless, so firmly established was the doctrine that the jury had to decide whether the words were defamatory or not, that neither the Court of Appeal nor the House of Lords had upset the verdict.

In many cases damages had been awarded for words which were not at all defamatory on their face. In *Tolley* v. *Fry* [1931] A.C. 333, Mr. Birkett had been briefed for the defendants, the big chocolate manufacturers. One of their advertisements, which had been widely circulated in the Press, bore a comic picture of Mr. Tolley, the amateur golf champion, in the act of driving, with a packet of Fry's chocolate protruding from his pocket and a descriptive limerick underneath. Mr. Birkett had submitted to the trial judge that the words were not capable of bearing a defamatory meaning, but after a prolonged argument the judge had held that they were. The jury had awarded £1,000 damages. The Court of Appeal had reversed this verdict and Mr. Tolley had gone to the House of Lords, which had ordered a new trial on the ground that persons who read the words might wonder how much Mr. Tolley had been paid for permitting their publication. If Mr. Tolley had actually done so, he would have definitely infringed his status as an amateur golfer.

In *Chapman* v. *Lord Ellesmere and others* [1932] 2 K.B. 431, every word of the offensive statement was admitted to be a matter of historic truth. Stewards of the Jockey Club had held an inquiry about a horse called Don Pat which had run at Kempton Park, and had warned its trainer off the Turf. It had been held that the words might bear the imputation that the trainer had doped the horse. In the case of *Morris* v. *Associated Newspapers, The Times*, 21st February, 1931, the House of Lords had given judgment in favour of the defendants on a plea of fair comment and justification. The defendant newspapers had published an account of the plaintiff's activities as a spiritualist medium which she had complained was defamatory.

Mr. Justice Hawke remarked that he still saw his learned friends girding at the restrictions placed upon them by the decision in *Hobbs* v. *Tinling* [1929] 2 K.B. 1; 73 Sol. J. 220, and other recent cases, and thinking how much more dramatic things might become if they were not so limited.

A lecture will be delivered on Friday, 15th December, in the Lincoln's Inn Hall (by kind permission of the Benchers), by Mr. Fergus Morton, K.C., on "Passing-off Actions." The chair will be taken at 7 o'clock precisely by The Right Hon. Lord Tomlin. The meeting ends at 8 p.m.

Royal Courts of Justice Staff Sick and Provident Fund Friendly Society.

Mr. Justice Hawke will preside at the annual concert of the Royal Courts of Justice Staff Sick and Provident Fund Friendly Society, to be held at Caxton Hall, on Friday, 15th December.

Mr. J. Graham Trapnell, K.C., will take the vice-chair. Among the guests invited to the chairman's table are: Lord Blanesburgh, Sir Claud Schuster, Sir H. Cassie Holden, Sir Leonard Kershaw and Sir Walter-Greaves Lord.

During the evening Mr. Justice Hawke will hand to Sir Leonard Kershaw a presentation from the members of the Society as an appreciation of the great interest he has taken in the Society for many years.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. Norman Marshall Higham to be the Registrar of Bolton and Bury County Court as from the 1st December, 1933.

Mr. Arthur L. Ralphes, Assistant Town Clerk, has been appointed Town Clerk of the Borough of Conway, in succession to Mr. Hugh Parry, who retires early next year. Mr. Ralphes is a native of Conway and has had twenty-eight years' legal and municipal experience.

Mr. J. R. Howard Roberts, Town Clerk of Hull, has been selected for appointment as Solicitor to the London County Council. The appointment will be considered by the Council for ratification next Tuesday.

Mr. W. E. J. Major, solicitor, of Devonport, has been appointed Plymouth City Coroner. Mr. Major was admitted a solicitor in 1923.

Mr. M. L. Taylor, solicitor, Deputy Town Clerk of Chester, has been appointed Clerk and Solicitor to the Bognor Regis Urban District Council. Mr. Taylor was admitted a solicitor in 1926.

Mr. N. S. Main, solicitor, Linlithgow, has been appointed Town Clerk of Linlithgow, in succession to the late Mr. James Russell. Mr. Main has been acting as Deputy Town Clerk for several years past.

Mr. J. P. Peacock, solicitor, of Manchester, has been appointed Deputy-Registrar to the Salford Hundred Court. Mr. Peacock was admitted a solicitor in 1926.

Mr. ARTHUR N. BALLARD, Deputy Town Clerk of Gillingham, Kent, has been appointed Town Clerk and Clerk to the Higher Education Committee of Lichfield, Staffs.

Mr. P. E. WHITE, LL.B., Senior Assistant Solicitor to the Salop County Council, has been promoted to the position of Deputy Clerk. Mr. White was admitted a solicitor in 1926.

East Sussex County Council have appointed Mr. W. R. EDWARDS, Assistant Solicitor under the Essex County Council, as Senior Assistant Solicitor. Mr. Edwards was admitted a solicitor in 1929.

Mr. R. B. G. BIRTILL, Clerk to the West Penwith Rural District Council, has been appointed Clerk to the Phillack Urban District Council. Mr. Birtill was admitted a solicitor in 1906.

Professional Announcements.

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VOLUNTARY HOMES AND THE CHILDREN ACT.

The attention of managers of voluntary homes is drawn to the provisions of Pt. V of the Children and Young Persons Act, 1933, which came into operation on the 1st November.

This Act places on the person in charge of a voluntary home the duty of sending certain prescribed particulars annually to the Home Office. These particulars have to be sent before 1st February, 1934; forms for use for this purpose can be obtained free of charge on application to the Home Office (Room 119), Whitehall, S.W.1.

A "voluntary home" for the purposes of the Act means any home or other institution for the boarding, care and maintenance of poor children or young people under seventeen, which is supported wholly or partly by voluntary contributions, but does not include any institution, house or home certified or approved by the Board of Control under the Mental Deficiency Acts, 1913 to 1927, unless children or young persons who are not mental defectives within the meaning of those Acts are received.

RENEWAL OF PRACTISING CERTIFICATES.

We would again remind our readers that Friday, 15th December, is the last day for renewing Solicitors' Practising Certificates for 1933-34. All certificates on which the duty is paid after 1st January next must be left with The Law Society for entry, and the names of solicitors taking out their certificates after that date cannot be included in "The Law List" for 1934.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE MAUGHAM. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Dec. 11	More	Jones	Jones	*Hicks Beach
,, 12	Hicks Beach	Ritchie	*Hicks Beach	*Blaker
,, 13	Andrews	Blaker	Blaker	*Jones
,, 14	Jones	More	*Jones	Hicks Beach
,, 15	Ritchie	Hicks Beach	Hicks Beach	*Blaker
,, 16	Blaker	Andrews	Blaker	Jones

DATE.	GROUP I. MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Dec. 11	Blaker	*Ritchie	Andrews	*More
,, 12	Jones	*Andrews	More	Ritchie
,, 13	Hicks Beach	*More	Ritchie	*Andrews
,, 14	Blaker	*Ritchie	Andrews	More
,, 15	Jones	Andrews	More	*Ritchie
,, 16	Hicks Beach	More	Ritchie	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 21st December, 1933.

	Div. Months.	Middle Price 6 Dec. 1933.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109⅝	3 13 0	3 7 10
Consols 2½%	JAJO	73⅝xd	3 7 11	—
War Loan 3½% 1952 or after	JD	100⅜	3 9 9	3 9 6
Funding 4% Loan 1960-90	MN	110½	3 12 5	3 7 9
Victory 4% Loan Av. life 29 years	MS	109⅝	3 13 0	3 9 4
Conversion 5% Loan 1944-64	MN	116¾	4 5 8	3 0 7
Conversion 4½% Loan 1940-44	JJ	108½	4 2 11	3 0 7
Conversion 3½% Loan 1961 or after	AO	100⅝	3 9 7	3 9 3
Conversion 3% Loan 1948-53	MS	98⅜	3 0 11	3 2 2
Conversion 2½% Loan 1944-49	AO	92¾	2 13 11	3 2 3
Local Loans 3% Stock 1912 or after	JAJO	86⅝xd	3 9 3	—
Bank Stock	AO	348½	3 8 11	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77xd	3 11 5	—
India 4½% 1950-55	MN	108	4 3 4	3 16 6
India 3½% 1931 or after	JAJO	84½xd	4 2 10	—
India 3% 1948 or after	JAJO	72xd	4 3 4	—
Sudan 4½% 1939-73	FA	111	4 1 1	2 3 2
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 7 6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	109xd	4 11 9	4 0 9
*Canada 3½% 1930-50	JJ	99xd	3 10 8	3 11 7
*Cape of Good Hope 3½% 1929-49	JJ	100xd	3 10 0	3 10 0
Natal 3% 1929-49	JJ	95xd	3 3 2	3 8 8
New South Wales 3½% 1930-50	JJ	96xd	3 12 11	3 16 5
*New South Wales 5% 1945-65	JD	108½	4 12 2	4 1 9
*New Zealand 4½% 1948-58	MS	108	4 3 4	3 15 0
*New Zealand 5% 1946	JJ	109xd	4 11 9	4 0 9
*Queensland 4% 1940-50	AO	101	3 19 2	3 16 8
*South Africa 5% 1945-75	JJ	112xd	4 9 3	3 14 9
*South Australia 5% 1945-75	JJ	108	4 12 7	4 2 9
*Tasmania 3½% 1920-40	JJ	99xd	3 10 8	3 13 9
Victoria 3½% 1929-49	AO	98	3 11 5	3 13 4
*W. Australia 4% 1942-62	JJ	100xd	4 0 0	4 0 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	85xd	3 10 7	—
*Birmingham 4½% 1948-68	AO	112	4 0 4	3 9 3
*Cardiff 5% 1945-65	MS	111	4 10 1	3 16 9
Croydon 3% 1940-60	AO	94	3 3 10	3 7 1
*Hastings 5% 1947-67	AO	114	4 7 9	3 12 7
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	99xd	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	73	3 8 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86	3 9 9	—
Manchester 3% 1941 or after	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49	MJSD	92	2 14 4	3 2 11
Metropolitan Water Board 3% "A" 1963-2003	AO	88	3 8 2	3 9 2
Do. do. 3% "B" 1934-2003	MS	89	3 7 5	3 8 4
Do. do. 3% "E" 1953-73	JJ	96	3 2 6	3 3 7
*Middlesex C.C. 3½% 1927-47	FA	102	3 8 8	—
Do. do. 4½% 1950-70	MN	113	3 19 8	3 9 5
Nottingham 3% Irredeemable	MN	86	3 9 9	—
*Stockton 5% 1946-66	JJ	112	4 9 3	3 16 2
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture	JJ	106	3 15 6	—
Gt. Western Rly. 5% Rent Charge	FA	121½	4 2 4	—
Gt. Western Rly. 5% Preference	MA	105½	4 14 9	—
‡L. & N.E. Rly. 4% Debenture	JJ	100½	3 19 7	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	91	4 7 11	—
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	100½	3 19 7	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	94½	4 4 8	—
Southern Rly. 4% Debenture	JJ	104	3 16 11	—
Southern Rly. 5% Guaranteed	MA	118½	4 4 5	—
Southern Rly. 5% Preference	MA	105½	4 14 9	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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